

DRAFT REPORT

FROM MAUKA TO MAKAI:

THE RIVER OF JUSTICE MUST FLOW FREELY

DRAFT REPORT
ON THE
RECONCILIATION PROCESS
BETWEEN
THE FEDERAL GOVERNMENT
AND
NATIVE HAWAIIANS

PREPARED BY

THE DEPARTMENT OF THE INTERIOR
AND
THE DEPARTMENT OF JUSTICE

AUGUST 23, 2000

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Description of the Reconciliation Process and this Draft Report

In 1993, with Public Law 103-150, the Apology Resolution, the United States apologized to the Native Hawaiian people for the overthrow of the Kingdom of Hawaiʻi in 1893 and expressed its commitment to acknowledge the ramifications of the overthrow in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people. The passage of the Apology Resolution was the first step in this reconciliation process.

In March of 1999, Senator Daniel K. Akaka asked Secretary of the Interior Bruce Babbitt and Attorney General Janet Reno to designate officials to represent their respective Departments in efforts of reconciliation between the Federal Government and Native Hawaiians. Secretary Babbitt designated John Berry, Assistant Secretary, Policy Management and Budget, for the Department of the Interior (Interior), and Attorney General Reno designated Mark Van Norman, Director, Office of Tribal Justice, for the Department of Justice (Justice)(together, the Departments), to commence the reconciliation process. Messrs. Berry and Van Norman, the authors of this report, have accepted Senator Akaka's definition of "reconciliation" as a "means for healing," and in addition believe, in words taken from one statement, "a 'reconciliation' requires something more than being nice or showing respect. It requires action to rectify the injustices and compensation for the harm." The authors urge the Federal Government to use the reconciliation process to address a wide array of issues, focusing on actions that will provide a better future for Native Hawaiians.

Public consultations with Mr. Berry and Mr. Van Norman commenced in December 1999, when meetings with the Native Hawaiian community were held on Kauaʻi, Maui, Molokaʻi, and Lānaʻi, and in Hilo,

Draft Report

Waimea and Kona on Hawaiʻi. Mr. Berry and Mr. Van Norman were joined by Ms. Loretta Tuell, Director of the Office of American Indian Trust and representative of Mr. Kevin Gover, Assistant Secretary for Indian Affairs, Department of the Interior and Mrs. Karen Sprecher Keating, Associate Solicitor for General Law, Department of the Interior. These public consultations ended in two days of formal hearings held on Oʻahu. Over forty hours of public statements were heard. During their visit to Hawaiʻi, the Federal officials also visited Native Hawaiian homestead communities, n- mahiʻai loʻi kalo (taro farms), Hawaiian language immersion schools, and Native Hawaiian fish ponds in the process of being restored, and observed numerous programs designed to benefit Native Hawaiians.

Reconciliation is an evolving and continuing process to address the political status and rights of the Native Hawaiian people, based on dialogue among the Federal and State Governments, Native Hawaiians, and Hawaiʻi's Congressional delegation, and further action by the United States Congress. This document contains the draft report of recommendations with respect to the continuation of the reconciliation process and should be read as merely the next step, as the United States and Native Hawaiians move forward in further dialogue.

Because the United States has acknowledged the actions enumerated in the Apology Resolution, the Departments believe the Federal Government should take action to address the needs and legitimate interests of Native Hawaiians. This reconciliation process should ultimately result in congressional confirmation of a political, government-to-government relationship between Native Hawaiians and the Federal Government pursuant to Congress' plenary authority over Indian Affairs. The nature of that relationship and the particular entity dealt with by the United States should be determined by Congress in consultation with Native Hawaiians.

Description of Contents

Immediately below this cover page is an executive summary that briefly describes the proposed plan of action. The remainder of this document constitutes the draft report, including more information regarding the plan of action on pages 17 through 20, followed by a brief history of Hawaiʻi.

Public Comment Encouraged - Please Note Deadline

You are invited to comment on any portion of this document and encouraged to distribute this document widely to others who may wish to comment. While we welcome comments on all sections of this document, we particularly encourage you to focus your attention and comments on the recommendations, as these will influence the direction of future actions to be taken in the reconciliation process. Please send any comments within thirty (30) days from the date set forth above. As indicated above, the draft report is just the next step in the ongoing dialogue that constitutes the reconciliation process. Comments received after the thirty (30) day deadline will be reviewed for consideration in the future.

A Description of How this Document is Being Distributed

Simultaneously with the issuance of this document, the Departments are issuing a jointly prepared press release to announce its release. A copy of this document is being mailed to everyone who provided his or

Draft Report

her name and address at any of the public meetings in Hawaii, all people who participated in the roundtable discussion held on December 11, 1999 and all people who included a return address with written statements. This document also is available on the website of the Department of the Interior at <www.doi.gov>.

Anyone who has previously corresponded on Native Hawaiian issues with Interior's officials by e-mail will be sent a copy of this document by e-mail. If you would like to receive a copy of this document by e-mail, please send a request to either of the e-mail addresses below and you will be sent a copy by return e-mail.

At Appendix A to this document, there is a list of organizations that have agreed to assist in the distribution of this document. At Appendix B, there is a separate list of offices of the Office of Hawaiian Affairs that have agreed to collect public comments and transmit them periodically for the next thirty (30) days to Interior by overnight mail, at Interior's expense.

If you would prefer to send your comments directly to Interior, please use the following address:

Assistant Secretary John Berry
c/o Document Management Unit
Department of the Interior
1849 C Street, NW, Mailstop-7229
Washington, DC 20240
Fax: (202) 208-3230 or (202) 219-1790 or (202) 219-1989

Electronic submissions are welcomed, but please send a hard copy of your statement as well.

Email: Karen_Sprecher_Keating@ios.doi.gov or
Edward_K_Thompson@os.doi.gov

The Departments are aware that the deadlines are tight but are also aware that finalization of the findings and issuance of the Final Report will take some additional time once comments have been received. To accomplish as much as possible this year, it was believed necessary to require comments to be sent relatively quickly. Any comments received after the deadlines will be read and may be incorporated in future actions taken.

Written Statements Submitted to Interior Previously

Written statements regarding the reconciliation process received by Interior are an official part of the record for this report. Copies of the written statements received will be available for public review in the near future at the locations listed in Appendix A. The original copy will be maintained at Interior, in Washington, D.C. As discussed in greater detail below, to the extent possible, written statements also will be posted on Interior's website at <www.doi.gov>.

Electronic Copies of Statements

Draft Report

A number of people have asked that written statements provided to Interior prior to and since the December 1999 hearings be posted on the Interior's website and Interior is in the process of posting such statements. If you have an electronic copy of your statement and access to a computer, please send it by e-mail, to either of the above e-mail addresses and it will be posted on Interior's website. Please include all appropriate contact information so that you may be contacted if Interior has difficulty extracting the statement.

TABLE OF CONTENTS

Native Hawaiian Reconciliation Executive Summary And Recommendations	1
Disclaimers	4
Introduction	6
Apology Act	8
The Reconciliation Process	13
Statements on Reconciliation	15
Native Hawaiian Reconciliation Process Plan of Action	
From Mauka to Makai: The River of Justice Must Flow Freely	17
Recommendation 1 - Federal Recognition	17
Recommendation 2 - Office of Native Hawaiian Issues at Interior	18
Recommendation 3 - Assignment of Office of Tribal Justice	19
Recommendation 4 - Native Hawaiian Advisory Commission	19
Recommendation 5 - True Reconciliation	20
A Brief History of Hawaiʻi	21
The Hawaiian People and the Kingdom of Hawaiʻi	21
Native Hawaiian Social System	21
International Relations	22
Transformation of the Native Hawaiian Land System	23
Hawaiian Political Economy	25
Overthrow, Annexation and Territorial Period	26
The Ceded Public Lands Trust	30
Hawaiian Home Lands	31
Statehood	36
Constitutional Convention of the State of Hawaiʻi	39
Native Hawaiian Cultural Renaissance and Self-Determination Movement	39
Current Status and Major Issues	45
Native Hawaiian Culture	45
Health and Welfare	45
Economics and Housing	46
Education	47
Cultural Rejuvenation	48

Draft Report

Self-Determination	49
Ceded Lands and the Home Lands Trust	50
Summary of United States Congressional Legislation Pertaining to Native Hawaiians	54
APPENDICES	56
Appendix A. Locations where Report and Written Statements are Available	A-1
Locations where Copies of the Draft Report are Available for Pickup	A-1
Locations where the Draft Report is Available for Public Inspection	A-2
Locations where Written Statements are Available for Public Inspection	A-5
Appendix B. Collection Points for Comments on the Draft Report	B-1
Appendix C. Participating Individuals and Organizations	C-1
Appendix D. Written Statements Received	D-1
Appendix E. Bibliography	E-1

Draft Report

**FROM MAUKA TO MAKAI:
THE RIVER OF JUSTICE MUST FLOW FREELY**

**NATIVE HAWAIIAN RECONCILIATION EXECUTIVE SUMMARY
AND RECOMMENDATIONS**

The Native Hawaiian people are the aboriginal, indigenous, native people of Hawaii. They have lived in Hawaiʻi for over 1,000 years, and their culture was based on a well developed system of agriculture and aquaculture. Native Hawaiians made remarkable artistic, cultural, and scientific advances, including amazing feats of navigation, prior to the first contact with Europeans in 1778.

In 1810, King Kamehameha I established the unified Kingdom of Hawaiʻi to govern the Native Hawaiian people. Over the next 60 years, the United States entered into several treaties of peace, friendship and commerce with the Kingdom of Hawaii, recognizing its status as an independent sovereign.

During the 1880s, western influence over the Kingdom of Hawaiʻi increased, and in 1893, as Queen Liliʻuokalani sought to restore the full authority of the Native Hawaiian monarchy, the American and European plantation owners acting in concert with the U.S. Minister and military forces overthrew the Kingdom. The Provisional Republic of Hawaii, formed by the plantation owners, then seized the Crown and public lands of the Kingdom of Hawaii, including one-third of Hawaiʻi that was impressed with a trust for the Native Hawaiian common people. Although President Cleveland initially opposed the overthrow, President McKinley supported the call of the Republic of Hawaiʻi for annexation. Congress annexed Hawaiʻi in 1898, without the consent of the Native Hawaiian people. As a result of the overthrow, laws suppressing Hawaiian culture and language, and displacement from the land, the Native Hawaiian people suffered mortality, disease, economic deprivation, social distress, and population decline.

The Territory of Hawaiʻi recognized that the conditions of the Native Hawaiian people continued to deteriorate, and members of the territorial legislature proposed that Congress enact a measure to rehabilitate the Native Hawaiian people by returning them to the land and promoting agriculture under Federal protections. In congressional hearings, the Secretary of the Interior acknowledged that the Native Hawaiian people were suffering a decline and that the Federal Government had a special responsibility to promote their welfare. In 1920, relying in part on the precedent of the General Allotment Act, which provided individual lands for American Indians under Federal protections, Congress enacted the Hawaiian Homes Commission Act to rehabilitate the Native Hawaiian people by setting aside for Native Hawaiian settlement and agriculture use 200,000 acres of the “ceded” lands, i.e., the former Crown and public lands of the Kingdom of Hawaii. Later, in the State Admissions Act, Congress set aside the balance of the ceded lands, not reserved for Federal purposes, in a public trust to be held and administered by the State for five purposes, including the betterment of the Native Hawaiians.

Draft Report

The Hawaiian Homeland settlements throughout the Hawaiian Islands assisted the Native Hawaiian people in maintaining their historic ties to the land and distinctly native settlements. In addition, through Native Hawaiian social and political institutions, such as the Native Hawaiian civic clubs, the Kamehameha schools, and the Lili'uokalani Hawaiian Children's Foundation, the Native Hawaiian community has maintained its distinct character as an aboriginal, native people. In recent years, overcoming a legacy of cultural suppression, Native Hawaiians have revitalized their language, culture, traditions, and aspiration for self-determination through Native Hawaiian language immersion programs, cultural education programs, restoration of traditional agriculture and aquaculture, creation of new social institutions and quasi-governmental service providers and the Native Hawaiian sovereignty movement, among other things. And, Native Hawaiians have made clear their desire for self-determination, i.e., increased Native Hawaiian control of Native Hawaiian affairs, resources, and lands.

Nevertheless, the Native Hawaiian people, as a native community, continue to suffer from economic deprivation, low educational attainment, poor health status, substandard housing, and social dislocation. In response, since the early 1970s, Congress has enacted statutes that recognize these problems among Native Hawaiians and establish programs to address them. For example, the Native Hawaiian Education Act refers to studies that show that Native Hawaiian students face educational risk factors start before birth, stemming from substandard prenatal care and high rates of teen births, and continue to score below national averages at all grade levels. 20 U.S.C. sec. 7902. This Act provides funding to Native Hawaiian schools and education councils to promote special education programs for Native Hawaiian students. The Native Hawaiian Health Care Act finds that "the unmet health needs of the Native Hawaiian people are severe and the health status of Native Hawaiians continues to be far below that of the general population of the United States." 42 U.S.C. sec. 11701. This Act provides funding to Native Hawaiian health care providers to provide preventative health care to the Native Hawaiian community. The Native Hawaiian Housing Bill, S. 225, finds that Native Hawaiians face the most severe housing shortage of any group in the Nation, and if enacted, would provide low income housing to Native Hawaiians on Hawaiian Home lands.

Against this background in 1993, Congress enacted Public Law 103-150, the Native Hawaiian Apology Resolution, which acknowledged the role of United States' officers in the overthrow of the Kingdom of Hawaii and called on the Executive Branch to undertake special efforts to promote reconciliation between the United States and the Native Hawaiian people. Senator Akaka and the Hawaiian congressional delegation requested that the Attorney General and the Secretary of the Interior appoint representatives to work with the Native Hawaiian people in furtherance of reconciliation. In December 1999, John Berry, Assistant Secretary for Policy, Management and Budget, Department of the Interior and Mark Van Norman, Director of the Office of Tribal Justice, were delegated to hold a series of public meetings with the Native Hawaiian people, as part of the reconciliation process. Throughout the meetings, Native Hawaiians repeatedly expressed the desire for increased self-determination concerning Native Hawaiian affairs, resources, and lands. In addition, Native Hawaiians have called upon the United States to assist

them in improving economic opportunities, educational attainment, health status, and housing. Specifically, the Native Hawaiian people requested that the Administration support and Congress enact S. 225, the Native Hawaiian Housing Act and reauthorize the Native Hawaiian Education Act and the Native Hawaiian Health Care Act.

Within the framework of Federal law, there are established precedents to accommodate the Native Hawaiian people's desire for increased self-determination. American Indian tribes and Alaska Native villages exercise self-determination over native institutions, such as schools and health care institutions; over native affairs, such as language and cultural preservation; and over native lands and resources. They do so through recognized tribal governments and federally chartered native corporations in the context of the Federal policy of recognizing the unique government-to-government and special relationships that exist between the United States and its native peoples. American Indian and Alaska Native peoples value self-determination as an avenue for addressing their community, economic, educational, health, and social needs. Indeed, American Indian and Alaska Native peoples view the Federal Indian self-determination policy as recognizing their legitimate aspiration to transmit their distinct native values, traditions, beliefs, and aboriginal lands to their future generations.

In furtherance of reconciliation process, the Native Hawaiian people seek to re-organize a native governing body. A Native Hawaiian Governing Body, organized against the background of established precedent, would serve as a representative voice for the Native Hawaiian people, focus community goals, provide governmental services to improve community welfare, and recognize the legitimate aspiration of the Native Hawaiian people to transmit their values, traditions, and beliefs to their future generations. In recognition of the United States special trust relationship with its native peoples and in furtherance of the reconciliation process, the United States should assist the Native Hawaiian people by supporting reorganization efforts and clarifying its unique legal and political relationship.

Recommendation 1. It is evident from the documentation, statements, and views received during the reconciliation process undertaken by Interior and Justice pursuant to Public Law 103-150 (1993), that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions. As a matter of justice and equity, this report recommends that the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law, as do Native American tribes. For generations, the United States has recognized the rights and promoted the welfare of Native Hawaiians as an indigenous people within our Nation through legislation, administrative action, and policy statements. To safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, the Departments believe Congress should enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body. The determination of precisely how and whether a Native Hawaiian governing body should be recognized is a task that Congress should undertake in consultation with the Native Hawaiian people. Interior and Justice are ready to provide any appropriate assistance to Congress on these issues and will continue to work with the Native Hawaiian people to promote reconciliation and respect for Native Hawaiian rights in accord with Public Law 103-150.

Draft Report

Recommendation 2. This report recommends the establishment of an office in Interior to address Native Hawaiian issues, within the Office of the Assistant Secretary for Indian Affairs, following approval by the Office of Management and Budget and with appropriate Congressional notification.

Recommendation 3. This report recommends that the Department of Justice assign the Office of Tribal Justice on an ongoing basis to maintain a dialogue with the Native Hawaiian people on issues of mutual concern and to continue to work cooperatively with Interior on these issues.

Recommendation 4. This report recommends the creation of a Native Hawaiian Advisory Commission to consult with all bureaus within Interior that manage land in Hawai‘i regarding land management, resource, and cultural issues affecting Native Hawaiians.

Recommendation 5. The past history of United States-Native Hawaiian relations reveals many instances in which the United States actions were less than honorable. Native Hawaiians continue to suffer the effects of these actions, for which our Nation continues to have moral responsibility. For justice to be served, this report recommends that the past wrongs suffered by the Native Hawaiian people should be addressed. Case-by-case litigation would not be the most productive avenue for reconciliation. Instead, the Departments believe a more productive approach to reconciliation would be through more general efforts to promote the welfare of the Native Hawaiian people, respect their rights, and address the wrongs that their community has suffered. While the Departments are not able at this time to recommend a precise outline for these efforts, we believe that the Executive Branch, Congress, the State of Hawai‘i, and the Native Hawaiian people must develop an appropriate process to ensure true reconciliation.

DISCLAIMERS

As this report notes, Congress has enacted programs specifically for Native Hawaiians. This report does not address whether, as a statutory matter, Congress should amend Federal law to make Native Hawaiians eligible for Federal programs that currently extend to Native American Indian tribes generally.

While this report recommends Federal recognition of a Native Hawaiian governing body similar to those of Native American tribes, it is beyond the scope of this report to try to set forth in detail all the ramifications of Federal recognition. Rather, the Departments believe that, as part of the continuing reconciliation process, it is best to continue to work with Congress and the Native Hawaiian people to address these issues.

As noted in this report, under the United States Constitution, Congress has established special government-to-government relationships between the Federal Government and Indian tribes. Under these relationships, the Federal and Tribal Governments have their respective rights and obligations (e.g., Federal trust responsibilities). This report is intended to address only policy issues relating to Native Hawaiian self-determination within the framework of Federal law and does not address the full nature and extent of the rights and obligations that Congress could consider in legislation to formally extend Federal recognition, self-determination, and self-governance to Native Hawaiians.

Draft Report

This report does not address whether, in extending Federal recognition to Native Hawaiians, Congress should address any general or specific claims that Native Hawaiians may potentially assert with respect to the United States, the State of Hawaii, or other persons. Nor is it intended to create any right enforceable or cause of action by or against the United States, its agencies, officers, or any person.

This report is intended to apply in the domestic context in furtherance of the United States' special relationship with American Indians, Alaska Natives, and Native Hawaiians, and is not intended to have any implications for any right or duty under international law.

Draft Report

INTRODUCTION

E hōkū kōkou i ka lama kāpono
Let us light the torch of justice and reconciliation

This report is an outgrowth of reconciliation meetings held in Hawaiʻi in December 1999. The purpose of these meetings was to gather information on the status of the Native Hawaiian^{1/} people and to begin a reconciliation dialogue between the United States Government and Native Hawaiian people. The origin of the reconciliation process can be found in the Apology Resolution issued by Congress and signed by President Clinton on November 23, 1993 that stated in part:

The Congress . . . apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaiʻi on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination; expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaiʻi, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaiʻi and to support reconciliation efforts between the United States and the Native Hawaiian people.
(Pub. L. No. 103-150, 107 Stat. 1510 (1993)).

The time has come for the United States Government and Native Hawaiians to join hands to repair the past and build a better future, based upon righteousness and justice, and guided by the spirit of healing and aloha to fulfill the goal of reconciliation.

This report first provides the Apology Resolution. This report goes on to describe the reconciliation process to date and recommends certain steps the United States Government should take to continue reconciliation between the United States and the Native Hawaiian people.

The plan of action is followed by a brief history of Hawaiʻi. The history of the relationship between the United States and the State of Hawaiʻi has been told many times. An overview of the key political

^{1/} For the purposes of this report, Native Hawaiian means “any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaiʻi” as defined in the Apology Resolution. The Departments believe that Congress and Native Hawaiians should address whether this definition is appropriate as a matter of law and policy. In the Departments’ view, it would be preferable to empower the Native Hawaiian people to develop a community membership rule, consistent with Federal law. Congress could then use Native Hawaiian membership in place of current statutory definitions. Of course, the justifiable expectations and rights of native Hawaiians (as defined in the HHCA) under existing law must be taken into consideration.

Draft Report

developments leading up to the overthrow of 1893 and the annexation of 1898 can be found in the Apology Resolution. The history included here is meant to complement the Apology Resolution, and to serve the dual goals of moving forward the reconciliation process and educating the American public at large of the history of the Native Hawaiian people. This history is in no way complete; the Departments encourage interested readers to consult both the documents listed in the bibliography and the wealth of other histories written about Hawaiʻi. The history is followed by a discussion of the current status of the Native Hawaiian people and their culture as well as the issues of greatest concern to the Native Hawaiian people, including the overthrow of the Monarchy and the resulting disposition and use of the Crown and Government Lands of the Kingdom of Hawaiʻi.

^{2/}

Issued: August 23, 2000
Washington, D.C.

^{2/}The authors would like to thank the following individuals for their assistance in preparing this report: Adell Amos, Tia Blankenfield, Paul Chang, Melia Lane-Kamahele, Edward Keable, Karen Kelleher, Benton Pang, Karen Sprecher Keating, Ed Thompson and Loretta Tuell.

APOLOGY ACT

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaiʻi, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaiʻi.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas, a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaiʻi;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaiʻi, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas, the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaiʻi between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the ‘United States Minister’), the United States Minister assigned to the sovereign and independent Kingdom of Hawaiʻi conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaiʻi, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaiʻi;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaiʻi, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the ʻIolani Palace to intimidate Queen Liliʻuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas, the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaiʻi and in violation of treaties between the two nations and of international law;

Draft Report

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

“I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

“That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

“Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.”

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas, the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an “act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress”, and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Draft Report

Whereas, President Cleveland further concluded that a “substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair” and called for the restoration of the Hawaiian monarchy;

Whereas, the Provisional Government protested President Cleveland’s call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas, the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred to in this Resolution as the ‘Committee’) to conduct a new investigation into the events surrounding the overthrow of the monarchy;

Whereas, the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaiʻi;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaiʻi;

Whereas, on January 24, 1895, while imprisoned in ʻIolani Palace, Queen Liliʻuokalani was forced by representatives of the Republic of Hawaiʻi to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaiʻi;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaiʻi ceded sovereignty over the Hawaiian Islands to the United States;

Whereas, the Republic of Hawaiʻi also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaiʻi, without the consent of or compensation to the Native Hawaiian people of Hawaiʻi or their sovereign government;

Whereas, the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaiʻi as part of the United States, and vested title to the lands in Hawaiʻi in the United States;

Whereas, the Newlands Resolution also specified that treaties existing between Hawaiʻi and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Draft Report

Whereas, the Newlands Resolution effected the transaction between the Republic of Hawaiʻi and the United States Government;

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaiʻi and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaiʻi became the 50th State of the United States;

Whereas, the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas, the long-range economic and social changes in Hawaiʻi over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaiʻi has determined that the year 1993 should serve Hawaiʻi as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas, the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaiʻi in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas, it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaiʻi, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaiʻi and the United Church of Christ with Native Hawaiians;

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

The Congress--

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaiʻi on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaiʻi and the United Church of Christ with Native Hawaiians;

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaiʻi on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaiʻi, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaiʻi and to support reconciliation efforts between the United States and the Native Hawaiian people.

SEC. 2. DEFINITIONS.

As used in this Joint Resolution, the term ‘Native Hawaiian’ means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaiʻi.

SEC. 3. DISCLAIMER.

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Approved November 23, 1993.

THE RECONCILIATION PROCESS

In the Apology Resolution, the United States Congress and the President committed themselves to pursue a “reconciliation” between the United States and the Native Hawaiian people. The Apology Resolution acknowledged the illegal overthrow of the Kingdom of Hawaiʻi and denial of rights of Native Hawaiians to self-determination. The United States acknowledged the overthrow and its ramifications to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people. Further, the United States has recognized that the native people of Hawaiʻi are a unique population based on their aboriginal and indigenous presence in Hawaiʻi. *See* Exec. Order No. 13125, Sec. 10(b), June 8, 1999 (defining “Pacific Islander” to include the aboriginal, indigenous, native people of Hawaiʻi). The State of Hawaiʻi has also committed itself to similar efforts of reconciliation. *See* 1997 Haw. Sess. Laws 329 (clarifying legislative intent that revenue from the Public Land Trust is intended for OHA and not subject to the requirements of section 10-13.5 or the Hawaii Revised Statutes); 1997 Haw. Sess. Laws 359 (providing that portions of surplus land, renamed the Kalaeloa Community Redevelopment District, be used for commercial land to be managed by the Department of Hawaiian Home Lands).

It is important to understand the background and purpose of the Apology Resolution. Its legislative history reflects the impediments and challenges faced by Native Hawaiians in dealing with the Federal Government. The Federal Government historically developed a unique relationship to Native Hawaiians as an indigenous people. Although special legislation identified Native Hawaiians as an indigenous people, it was not until 1974 that Native Hawaiians began to be included in legislation designed to benefit other indigenous peoples like American Indians and Alaska Natives.

This experience served as the catalyst for the drafting and introduction of the Apology Resolution by Senators Daniel K. Akaka and Daniel K. Inouye. The Apology Resolution was introduced a total of four times during the span of three Congresses. The original Apology Resolution, Senate Joint Resolution 360, was introduced in the 101st Congress. It offered an apology to Native Hawaiians for the 1893 overthrow of the Kingdom of Hawaiʻi, and declared a trust relationship between the United States Government and Native Hawaiians. The same resolution was re-introduced in the 102nd Congress. Both times, no action was taken. In 1992, a new resolution, recognizing the centennial of the 1893 overthrow was introduced to educate the American public and Congress on the history of United States involvement in the 1893 overthrow. Senate Joint Resolution 335 passed the Senate by voice vote. The House of Representatives adjourned without considering the resolution in time for the centennial of the 1893 overthrow. The Apology Resolution was reintroduced in the 103rd Congress and passed the Senate by a roll call vote of 65 to 34. The resolution subsequently passed the House of Representatives and was signed by President Clinton on November 23, 1993.

The passage of the Apology Resolution has sparked a healthy debate about the political status of Native Hawaiians and the legal issues surrounding the 1893 overthrow. The Apology Resolution is viewed as the first step in the healing process. It is building new bridges towards efforts of reconciliation between the United States and the Native Hawaiian people. Senator Akaka has stated that his goal for the Apology

Draft Report

Resolution was to educate Congress and the American public on the overthrow of the Kingdom of Hawaiʻi, provide for a continuing forum for discussion, and lay the foundation for reconciliation efforts between Native Hawaiians and the Federal Government.

On March 10, 1999, Senator Akaka requested Attorney General Janet Reno and Interior Secretary Bruce Babbitt to designate officials to address the reconciliation process as called for in the Apology Resolution. Attorney General Janet Reno designated Mark Van Norman, Director, Office of Tribal Justice and Interior Secretary Bruce Babbitt designated John Berry, Assistant Secretary, Policy, Management and Budget to begin implementing reconciliation efforts as called for in the Apology Resolution.

In December 1999, Mark Van Norman and John Berry took an important step in the reconciliation process with a series of statewide meetings. Berry and Van Norman were joined by Loretta Tuell, Director of the Office of American Indian Trust and representative of Kevin Gover, Assistant Secretary for Indian Affairs, Interior and Karen Sprecher Keating, Associate Solicitor for General Law, Interior. To begin the reconciliation process, a private and solemn service was held at Maunaʻala, the Royal Mausoleum and resting place of Queen Liliʻuokalani, the last reigning Hawaiian Monarch. At the Royal Mausoleum, John Berry gave this statement:

With profound respect to the memory of Queen Liliʻuokalani; with sincere apology for the role of the United States and its ministers in the dissolution of her throne without the consent of the majority of the people of Hawaiʻi; with genuine sorrow for the indignities that this great woman endured with grace; and, with gratitude for her love of peace and her many contributions to this great land, its people, and all of the people of the United States, we place this hoʻokupu (gift) on behalf of the President and the people of the United States, to honor her memory and spirit, and pay tribute to Hawaiʻi's last sovereign, Queen Liliʻuokalani.

Following the service a short statement was given at the Queen's statue in downtown Honolulu and formal speeches were given by Hawaiʻi's Congressional delegation, Lt. Governor Mazie Hirono, Berry, and Van Norman at the Coronation Pavilion of the ʻIolani Palace.

In his speech, Senator Akaka declared that, "Reconciliation was never intended to be unilaterally determined by the Federal Government. Reconciliation is not limited to one particular issue or a narrowly defined process. Reconciliation, or healing, involves a multitude of issues, the outcome of which will be determined by the Native Hawaiian community." John Berry stated, "The goal of reconciliation is clear. We must remove the past dams of injustice and build a better future for the Native Hawaiian people while instilling a love of righteousness in each of our hearts. We come with open minds, open ears, and open hearts to pursue these tasks."

Van Norman and Berry visited Native Hawaiian communities and held informal discussions on Oʻahu, Kauaʻi, Maui, Hawaiʻi, Lānaʻi, and Molokaʻi. They also met with representatives from Niihau, a privately owned island. Some of the site visits included Ke Kula Niihau O Kekaha (Hawaiian Language Immersion School on Kauaʻi), Kauaʻi Habitat for Humanity, Hui No Ke Ola Pono Health Center on Maui,

Draft Report

N~wah~Sokalani~Cpu~u (the first Hawaiian language immersion high school on the island of Hawai~i), and L~na~i Hawaiian Home Lands site.

The series of hearings culminated with two days of meetings attended by over 300 people at the East-West Center on the campus of the University of Hawai~i at M~noa. The first day's discussion topics included Native Hawaiian health, education, culture, economic development, land and natural resources, and housing. Panelists included members from Native Hawaiian organizations and other individuals. Public input was heard following each panel discussion.

The second day was dedicated to a roundtable discussion on the process for reconciliation for Native Hawaiians and the Federal Government. The focus of the roundtable discussion was three-fold: (1) determining the critical issues confronting the Native Hawaiian people, (2) determining the political relationship between the United States and the Native Hawaiian people, and (3) determining the direction the reconciliation process should take. The roundtable panelists included over sixty individuals, including members of many Native Hawaiian organizations. Public input was heard at the end of the roundtable discussion.

Berry and Van Norman listened to over forty hours of statements covering a wide range of concerns in the Native Hawaiian community. Berry commented,

There is a great ignorance on the mainland to the history of Hawai~i, to the history of the sorry treatment of Native Hawaiians by the United States, and that needs to be elevated. We need to be about educating Americans, because Americans are a justice-loving people.

Statements on Reconciliation

During the two days of meetings at the University of Hawai~i at M~noa, more than 300 people attended and approximately 100 statements were heard each day covering a wide range of issues (see Appendix C for list of participating individuals and organizations). In addition, 265 individuals and organizations submitted statements in the ensuing months (See Table 1). Many of these statements recommended certain steps that would further the reconciliation process. Many of those who provided statements, including most of the major Native Hawaiian organizations, expressed their belief that Federal recognition is the necessary next step in the reconciliation process. In addition to Federal recognition, the statements reflected the issues and concerns described previously in this report and made numerous valuable recommendations to the Federal Government that should be considered as the reconciliation process continues.

We could not include all of the written statements in this Report, but all written statements received are an official part of the record (see Appendix D). Because of the size of Appendix D it will not be distributed with every copy of the Report. However, complete copies of the written statements will be available for public review at the locations indicated in Appendix A. The original copies will be held in Washington,

Draft Report

D.C. To the extent possible, Interior also has posted statements on the Department of the Interior's website at <www.doi.gov>.

Table 1. Written Reconciliation Statements received, by topic. Many individuals addressed more than one issue, so the counts below are greater than the total number of written statements received.

Topic	Count	Percentage
Sovereignty	75	29%
Nation-within-a-Nation	15	5.9%
Self-Determination	43	16.9%
Anti-Reconciliation	18	7%
Health	52	20.3%
Education	55	21.6%
Housing	43	16.9%
Land and Natural Resources	63	23.9%
Community and Economic Development	47	19.2%

**NATIVE HAWAIIAN RECONCILIATION PROCESS PLAN OF ACTION
FROM MAUKA TO MAKAI: THE RIVER OF JUSTICE MUST FLOW FREELY**

Recommendation 1 - Federal Recognition

It is evident from the documentation, statements, and views received during the reconciliation process undertaken by Interior and Justice pursuant to Public Law 103-150 (1993), that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions. As a matter of justice and equity, the Departments believe the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law, as do Native American tribes. For generations, the United States has recognized the rights and promoted the welfare of Native Hawaiians as an indigenous people within our Nation through legislation, administrative action, and policy statements. To safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, Congress should enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body. The determination of precisely how and whether a Native Hawaiian governing body should be recognized is a task that Congress should undertake in consultations with Native Hawaiian people. Interior and Justice are ready to provide any appropriate assistance to Congress on these issues and will continue to work with the Native Hawaiian people to promote reconciliation and respect for Native Hawaiian rights in accord with Public Law 103-150.

Far and away the greatest number of statements received concerned Native Hawaiians' desire to have greater control over their present lives and their destinies as well as the lives and destinies of their children. The Departments believe that these goals can be achieved through recognition by the United States of a Native Hawaiian governing body similar to Native American tribes. Because practical considerations suggest that Federal legislation would be the best method for ensuring such recognition, the Departments believe strongly that all concerned should focus their energies on obtaining this legislative recognition immediately. On this point, the Departments note that the State of Hawaii's Legislature has recently called upon the Federal Government to clarify the political relationship between the United States and the Native Hawaiian people. (H.C.R. No. 41 (2000)).

Because of the role of United States' officers in the dissolution of the Native Hawaiian monarchy, many people testified that the Federal Government should assist with the creation of a Native Hawaiian entity that may apply for recognition.

The Departments believe that the reconciliation process highlights the importance of legislation that clearly acknowledges: (1) the Native Hawaiian people are an indigenous people with a distinct community who may be dealt with pursuant to Congress' plenary authority over Indian Affairs; (2) a framework for recognition of a Native Hawaiian governing body that will represent the Native Hawaiian people; and (3) consistent with Federal law, the Native Hawaiian people should be empowered to develop their own membership rule for community membership which when effective should take the place of existing statutory

definitions. Of course, the justifiable expectations and rights of native Hawaiians (as defined in the HHCA) under existing law must be taken into consideration.

The Departments note that the Executive Branch should not prescribe what form any new Native Hawaiian governing body should take, provided that it is consistent with Federal law and protects the rights of its individual members. This report notes the existence of the tribal form that exists for Native Americans in Alaska and the contiguous 48 states. In addition, Congress adopted a corporate form that exists for Alaskan Natives for the limited purposes of holding certain assets provided in settlement of land claims and to administer Federal programs in certain limited circumstances. Native Hawaiians and Congress should determine the appropriate model.

Recommendation 2 - Office of Native Hawaiian Issues at Interior

The Departments recommend the establishment of an office in Interior to address Native Hawaiian issues, within the Office of the Assistant Secretary for Indian Affairs, following approval by the Office of Management and Budget and with appropriate Congressional notification.

The Departments believe that the reconciliation process should be ongoing, and permanency should be achieved by the creation of a permanent office on Native Hawaiian issues (NH Office) within Interior, with experienced, permanent-career staff dedicated solely to working on issues of concern to Native Hawaiians. The needs of the Native Hawaiian people are complex and deserving of experienced staff dedicated to the reconciliation process and promoting the welfare of the Native Hawaiian people.

An office staffed with professional and appropriate support staff dedicated solely to addressing Native Hawaiian issues would insure that Interior can respond appropriately and in a timely manner to requests for assistance by Native Hawaiians. The power of Congress and the Executive Branch to work with indigenous peoples has traditionally been administered by the Secretary of the Interior, so the Departments believe that the NH Office should be established within the Office of the Assistant Secretary for Indian Affairs, and headed by a knowledgeable Federal official who will report directly to the Assistant Secretary. Specific issues that the office might address include:

A representative from the NH Office can work with the Hawaiian delegation, the State of Hawaii and Native Hawaiian organizations to collect existing information and inventories of the Federal and State lands that were formerly Ceded Lands, in order to expedite the finalizing of an inventory of such Ceded Lands. It has become apparent that substantial work has been done on what constituted the lands originally taken over by the Provisional Government in 1893, those ceded to the United States in 1898 and those lands transferred to the State of Hawaii in 1959, but no one report can provide definitive answers with respect to all questions raised about such lands.

It is the Departments' recommendation that a priority should be developed for the transfer of future surplus Federal lands to the Native Hawaiian people in appropriate circumstances through legislation. The NH Office will provide appropriate assistance to Congress on this issue.

Draft Report

The NH Office will advise the Secretary on the implementation and coordination of Federal programs as they affect Native Hawaiians in all bureaus of Interior.

The Secretary of the Interior will convene an Interior Working Group, consisting of the Interior bureaus that are active in Hawaiʻi. The Working Group will be chaired by the NH Office.

The NH Office will work closely with the Interior bureaus that are active in Hawaiʻi and will ensure that the bureaus seek input regularly from the Native Hawaiian Advisory Commission discussed below to assure consistency in application of Interior's policies to all issues of concern to Native Hawaiians. Efforts include continuing to rename geographic features on lands managed by Interior bureaus with traditional Hawaiian names.

Recommendation 3 - Assignment of Office of Tribal Justice

The Departments recommend that the Department of Justice assign the Office of Tribal Justice on an ongoing basis to maintain a dialogue with the Native Hawaiian people on issues of mutual concern and to continue to work cooperatively with Interior on these issues.

Recommendation 4 - Native Hawaiian Advisory Commission

The Departments recommend the creation of a Native Hawaiian Advisory Commission to consult with all bureaus within Interior that manage land in Hawaiʻi regarding land management, resource, and cultural issues affecting Native Hawaiians.

Over the years, Native Hawaiians have called for better consultation with Native Hawaiians regarding matters that affect the culture, language, sacred sites and very lives of Native Hawaiians. During the December meetings and hearings, numerous Native Hawaiians asked that Interior regularize input from Native Hawaiians on such issues. Many people offered statements on the lack of sensitivity to, or understanding of, Native Hawaiian culture on the part of Federal agencies, which they believed is due to the absence of a coherent policy for the protection of Native Hawaiian cultural sites and the failure by Federal agencies to consider the impacts of Federal or federally assisted undertakings upon Native Hawaiian cultural sites. Representatives of Interior's bureaus also indicated that a centralized resource for consultation would be helpful for them, so that such a commission would provide a readily available forum for consultation.

Accordingly, this report recommends that the Secretary create a Native Hawaiian Advisory Commission (NHAC) for all bureaus within Interior that manage land in Hawaiʻi regarding land management, resource, and cultural issues affecting Native Hawaiians that will consist of Native Hawaiians appointed by the Secretary of the Interior. The NHAC will advise the NH Office and Interior bureaus on issues affecting Native Hawaiians on lands and waters managed by Interior's bureaus. The NHAC's advice and recommendations will be considered by each agency within the legal mandates applicable to such agency.

Recommendation 5 - True Reconciliation

The Departments believe that the past history of United States-Native Hawaiian relations reveals many instances in which the United States actions were less than honorable. Native Hawaiians continue to suffer the effects of these actions, for which our Nation continues to have moral responsibility. For justice to be served, past wrongs suffered by the Native Hawaiian people should be addressed. Case-by-case litigation would not be the most productive avenue for reconciliation. Instead, the Departments believe a more productive approach to reconciliation would be through more general efforts to promote the welfare of the Native Hawaiian people, respect their rights, and address the wrongs that their community has suffered. While the Departments are not able at this time to recommend a precise outline for these efforts, we believe that the Executive Branch, Congress, the State of Hawaii, and the Native Hawaiian people must develop an appropriate process to ensure true reconciliation.

A BRIEF HISTORY OF HAWAII

The Hawaiian People and the Kingdom of Hawaii

The State of Hawaii consists of eight major islands and 124 minor islands encompassing 4,112,955 acres (State of Hawaii Data Book, Hawaii Department of Business, Economic Development, and Tourism, table 5.08 (1998)). At the time of the first documented European contact in 1778 by Captain James Cook, the native people “lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion.” (Pub. L. No. 103-150, 107 Stat. 1510). The islands were ruled by a class of deified aliʻi or chiefs who were related to each other through intermarriage. The chiefly genealogies traced their origin to the spiritual forces of nature who were honored as deities. (David Malo, *Moʻolelo Hawaiʻi: Hawaiian Antiquities* at 1-9, 52-86 (1971) (hereafter Malo)). The ʻohana or extended family was the primary social unit for the majority of the society. At the time of European contact in 1778, control over the islands was divided among four high chiefs: High Chief Kalaniʻōpuʻu, who ruled Hawaiʻi island; High Chief Kahekili, who ruled Maui, Lānaʻi, and Kahoʻolawe; High Chief Kahahana, who ruled Oʻahu and Molokaʻi; and High Chief Kamehameha, who ruled Kauaʻi and Niihau (Samuel M. Kamakau, *Ruling Chiefs of Hawaiʻi*, Translated by Mary Kawena Pukui at 78-92 (revised edition 1992)). At that time, the population of the islands is most commonly estimated at 400,000 to 800,000, but some estimates place the population over 1,000,000. (Robert C. Schmitt, *Historical Statistics of Hawaii* at xv-xviii, Table 1.1 (1977) (hereafter Schmitt, *Historical Statistics*); Schmitt, *Demographic Statistics of Hawaii, 1778-1965* at 14-25, Table 6 (1968) (hereafter Schmitt, *Demographic Statistics*); David E. Stannard, *Before the Horror*, (1989)).

Native Hawaiian Social System

The island nation which Captain Cook observed in 1778 and 1779 had an organized and stable land tenure system under the stewardship of the chiefly rulers. The land tenure system provided that each High Chief controlled the land within his boundaries, which could consist of a region on an island, one island, or several islands. The High Chief would keep some land for his own use and distribute the rest to Konohiki (lesser ranking chiefs) loyal to him. The Konohiki were allocated ahupuaʻa, a pie shaped parcel of land, generally contiguous with a valley, starting at two mountain ridges and widening as it reached the ocean. The ahupuaʻa provided them access to all necessary resources, from fresh water and timber, to cultivatable lands, fish ponds, and the ocean. The Konohiki would allocate strips of land, called ʻili, to Makaʻāinana (the common people) that included access to all of these resources. The Konohiki were also responsible for organizing Makaʻāinana for public works projects, including building roads, irrigation systems, and fish ponds and protecting communal rights, including use of irrigation water and fishing rights in the ocean. In addition to working their own land, Makaʻāinana provided labor services on the chiefs' lands and provided tribute to the chiefs, including food, bark cloth, and other household items. This communal, subsistence-based society was marked by reciprocal obligation and support between the chiefs and people. When a new High Chief came to power through war or inheritance, he would claim and redistribute the lands to his loyal Konohiki. It is important to note that this regular redistribution of land among the chiefs did not affect the rights of Makaʻāinana to use the lands, thus ensuring that Makaʻāinana continued to cultivate land and have stable access to resources. (Samuel M. Kamakau, *Na Hana a ka Poʻe Kahiko: The Works of the People of Old*. Translated by Mary Kawena Pukui, Bernice P. Bishop Museum Special Publication 61

(1976); Samuel M. Kamakau, *Ka Po'e Kahiko: The People of Old*. Translated by Mary Kawena Pukui. Bernice P. Bishop Museum Special Publication 51 (1991); E. S. Craighill Handy and Elizabeth Green Handy with Mary Kawena Pukui, *Native Planters in Old Hawaii, Their Life Lore and Environment*, Bernice P. Bishop Museum Bulletin 233 at 1-67, 267-388 (1972); E.S. Craighill Handy and Mary Kawena Pukui, *The Polynesian Family System in Ka'u, Hawaii* (1958 reprint 1976); Malo).

Shortly after European contact, Kamehameha I began to unite the islands into the Kingdom of Hawaii, conquering each of the major islands except Kauai. All the islands were united in 1810 when Kamehameha I gained the allegiance of Kaumuali'i, High Chief of Kauai and Niihau. In addition, beginning shortly after Cook's arrival at the islands, Western trading ships stopped regularly to trade for food, water, and other supplies to support the increasing trans-Pacific trade and whaling industry. Americans and Europeans began settling on the islands and Kamehameha I and his chiefs, as well as later Kings, granted significant amounts of land to foreigners. Lands were granted in a manner consistent with the land tenure system, that is, with the understanding that the lands would be returned upon death of the chief for redistribution by the new chief and that the rights of Maka-inana to use the resources of the land were not impaired.

International Relations

During the 1800s, the Kingdom of Hawaii was recognized by many nations as a sovereign and independent nation. As a nation, it signed treaties with over fifteen other nations, mostly those European countries with a presence in the Pacific, including England in 1836. On December 23, 1826, the United States signed a treaty of friendship, commerce, and navigation with the Kingdom of Hawaii and in 1849 the United States signed and ratified another Friendship Treaty dealing with friendship, commerce, and navigation. The 1849 Friendship Treaty had an initial life of ten years with extensions that allowed either party to extinguish the treaty with one year's notice. In addition, the 1875 Reciprocity Treaty between the United States and the Kingdom of Hawaii provided for sale of duty-free goods in both directions. The Reciprocity Treaty was renewed and revised to cede exclusive use of Pearl Harbor to the United States in 1887. These treaties were still in effect when the Hawaiian Monarchy was overthrown. (Affairs in Hawaii, H.R. Exec. Doc. No. 1, 53rd Cong., 3d Sess. (1894) (hereafter H.R. Exec. Doc. No. 1 (1894)); Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume I, 1778 - 1854, Foundation and Transformation* (1938 reprint 1980); Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume II, 1854 - 1874, Twenty Critical Years* (1953 reprint 1966); Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume III, 1874 - 1893, The Kalakaua Dynasty* (1967) (hereafter Kuykendall, Volume III))

The United States clearly viewed the Kingdom of Hawaii as an independent nation as evidenced by the negotiation and signing of several treaties, including those described above. However, the United States also viewed Hawaii as important to its needs. The Tyler Doctrine of 1842 had the effect of applying the Monroe Doctrine to Hawaii, stating:

Considering, therefore, that the United States possesses so very large a share of the intercourse with those islands, it is deemed not unfit to make the declaration that their Government seeks nevertheless no peculiar advantages, no exclusive control over the

Draft Report

Hawaiian Government, but is content with its independent existence, and anxiously wishes for its security and prosperity. Its forbearance in this respect, under the circumstances of the very large intercourse of their citizens with the islands, would justify the Government, should events hereafter raise, to require it, in making a decided remonstrance against the adoption of an opposite policy by any other power. (H.R. Exec. Doc. No. 1 at 39-41 (1894)).

As early as the 1840s, the United States Navy had identified Pearl Harbor and other sites on Hawaiʻi as important to the defense of United States interests (Sylvester Stevens, *American Expansion in Hawaii 1842-1898* at 1-23 (1968) (hereafter Stevens); Native Hawaiians Study Commission, *Report on the Culture, Needs and Concerns of Native Hawaiians* at 36 (1983) (hereafter Native Hawaiians Study Commission Report); H.R. Exec. Doc. No. 1 (1894)). Military interest in Hawaiʻi increased over the following fifty years as European presence and trade opportunities grew in the Pacific.

Transformation of the Native Hawaiian Land System

Between 1820 and 1850, significant changes in the land tenure system occurred in parallel with dilution of other aspects of the indigenous culture and disease epidemics that wiped out more than two-thirds of the native population (Schmitt, *Demographic Statistics* at 46-74, Tables 6, 8, 10, 16; Schmitt, *Historical Statistics* at xv-xviii, Tables 1.1 & 1.12). Pressure to change the land tenure system came from Americans and Europeans who wanted stable land ownership to permit long-term leasing and outright land ownership for large-scale agricultural ventures. (Lilikala Kameʻeleiwiwa, *Native Land and Foreign Desires: Pehea L~E Pono Ai?* at 169-225 (1992) (hereafter Kameʻeleiwiwa)). Despite these pressures and because of the importance of the land to Native Hawaiian culture and society, the laws passed by the Kingdom of Hawaiʻi protected the traditional rights of the common people to use the lands. These laws largely remained in effect even after the overthrow of the Kingdom of Hawaiʻi.

First, the Law of 1825 was adopted allowing hereditary succession and allowing Konohiki to retain land after the death of the King. The Law of 1825 was followed by the Declaration of Rights in 1839 that protected tenants rights so “all the people, together with their lands, their building lots, and all their property . . . nothing whatever shall be taken from any individual, except by express provision of the laws.” (Native Hawaiian Rights Handbook at 5 (Melody Kapilialoha MacKenzie, ed. 1991) (hereafter Native Hawaiian Rights Handbook)). The Constitution of 1840 codified that the land belonged to the chiefs and the people subject to the King’s management, converted the absolute monarchy into a constitutional monarchy, and provided for a House of Nobles chosen by the King, a popularly elected House of Representatives, and a Supreme Court. (Native Hawaiian Rights Handbook at 150). Further, an 1841 amendment to the Constitution provided the governors of the islands with the authority to enter into fifty year leases with foreigners. (Native Hawaiian Rights Handbook at 6).

From 1845 through 1848, the final steps toward a private land ownership system were taken through Ka Mahele (land division). Starting in 1845, a Board of Land Commissioners worked to determine how to divide the land among the King, Chiefs, and Makaʻinana. (Principles Adopted by the Board of Commissioners to Quiet Land Titles in their Adjudication of Claims Presented to them, *Laws of Hawaii* 81 (1847, reprinted in 2 Revised Laws of Hawaii 2121 (1925))). By 1848, title to the lands had been clarified

and the Chiefs were granted 1,619,000 acres, Kamehameha III was granted 984,000 acres (called the King's Lands and later the Crown Lands), and the Government was granted 1,523,000 acres (henceforth called the Government Lands). (J.J. Chinen, *The Great Mahele: Hawaii's Land Division of 1848* (1978) (hereafter Chinen); Neil M. Levy, *Native Hawaiian Land Rights*, 63 Cal. L. Rev. 848 at 856 (1975) (citing Kelly) (hereafter Levy)). All lands were granted subject to the rights of the tenants, in a continuation of the trust concept inherent in the traditional land tenure system.

The Kuleana Act of 1850 provided that Makaʻāinana could go before the Land Commission to claim their lands and receive a royal patent. Due to a variety of reasons, including a lack of understanding of the law and lack of familiarity with private land rights, prior movement of large numbers of Native Hawaiians off the land and into urban areas, legal limitation of claim rights to only those lands being actively cultivated, lack of adequate notice to people living in rural areas, requirements to pay for a survey of the land claim, a time limit of four years provided for Makaʻāinana to claim lands, and fear of the chiefs' reactions, most Makaʻāinana never claimed their share of the land. (Kameʻeleihiwa at 296-298; Theodore Morgan, *Hawaii A Century of Economic Change: 1778 - 1876* at 137 (1948) (hereafter Morgan)). When the final land grants were made under the Kuleana Act of 1850, only 8,205 Makaʻāinana received 28,600 acres or 0.8 percent of all of the lands of Hawaiʻi. Although all of the 29,221 adult males in Hawaiʻi in 1850 were eligible to make land claims, only 29 percent received land while 71 percent remained landless. (Levy at 856; *Native Hawaiian Rights Handbook* at 7). For example, in Puna, Hawaiʻi only nineteen awards were made, fifteen to chiefs and four to Makaʻāinana, although in 1858, 894 men paid taxes, many of whom would have been eligible to receive lands. (Jon Matsuoka, Davianna Pūmaikaʻi McGregor, Luciano Minerbi, Pualani Kanahale, Marion Kelly, and Noenoe Barney-Campbell, *Native Hawaiian Ethnographic Study for the Hawaiʻi Geothermal Project Proposed for Puna and Southeast Maui* at 47-53 (1996)).

The intent of Ka Mahele and the various laws was to increase land tenure stability while ensuring that the common people retained access to the lands and their rights were protected. However, Ka Mahele failed to produce the results initially intended. Seventy-one percent of Native Hawaiian males were left landless and thousands of acres of the chief's lands were sold to foreigners. As a result, many Native Hawaiians were displaced from the land and cut off from their means of securing a livelihood. In order to feed, clothe and shelter their families, landless Hawaiians were forced to seek wage-earning jobs. Moreover in 1850, after the enactment of the Kuleana Act, new taxes were imposed upon the common Hawaiians - a kuleana land tax; a \$2 school tax for males, a 50-cent horse tax, a 25-cent mule tax, and a \$1 dog tax. To pay these taxes, the common Hawaiian had to enter into the market economy by selling the produce of his land or by laboring for a wage. Many Native Hawaiians labored in the plantations as well as on ranches and in small enterprises such as gathering pulu (tree fern down) and pepeiao (fungus), coffee growing and salt production for export. (William Goodale, *The Hawaiian as Unskilled Laborer*, in *Hawaiian Almanac and Annual* 183 (1914); Morgan at 96-194)).

In 1850, an Act "to abolish the disabilities of aliens to acquire and convey lands in fee simple" was passed that allowed any resident, regardless of citizenship, to own and convey lands. The final step in the process of setting up private property in Hawaiʻi was the auctioning off of Government Lands from 1850 to 1860. Of the lands that were auctioned off, 64 percent were sold to foreign settlers while only 36 percent were sold to Native Hawaiians (Davianna Pūmaikaʻi McGregor, *An Introduction to the Hoʻāina and Their Rights*, 30 *Hawaiian Journal of History* 1 (1996); Andrew Lind, *An Island Community: Ecological*

Succession in Hawaii at 51, (1968)). The alienation of Hawaiian land to foreigners proceeded rapidly. By 1862, 75 percent of all the land on Oahu was owned or controlled by foreigners except at Waialua where foreigners controlled half of the land (William F. Blackman, *The Making of Hawaii: A Study in Social Evolution* at 161 (1977)). In addition, the potential for land movement from Native Hawaiian to foreign hands was increased by the passage of the Adverse Possession Law in 1870. Under this law, one could acquire property owned by another if one occupied the land for a statutory length of time in a visible, notorious, continuous, exclusive, and hostile manner and paid the property tax. In 1871, the statutory time was set at twenty years, but was shortened to ten years in 1898 under the Republic of Hawaii and remained at ten years until 1973. (Native Hawaiian Rights Handbook at 116).

Two court cases paved the way for Native Hawaiians to lose control of the King's Lands when the Monarchy was overthrown. In 1865, the King's Lands were declared Crown Lands, meaning that control of the lands passed to the Monarch as head of the government and not to the individual. (Native Hawaiian Rights Handbook at 10; *Estate of Kamehameha IV*, 2 Haw. 715 (1864)). In 1882, the Hawaii Supreme Court reaffirmed that the Crown Lands were not the personal property of the ruler, but the property of the institution of the Monarchy and that these lands could not be sold or alienated. (6 Hawaiian Reports 446-447, 457-460, *Laws* at 11-12 (1882)). As a result of these rulings, when the Monarchy was overthrown, the Crown Lands came under the control of the Provisional Government rather than remaining under the control of the Native Hawaiians or the Queen.

The alienation of Native Hawaiians from the land can be seen in the census of 1890:

By 1890 Native Hawaiians numbered but 41,000 out of a total population of nearly 90,000. Declining in numbers and forced into an inferior position in the labor system, the natives devoted themselves to agriculture on a small scale, fishing, and maritime activities. Their small holdings, however, were of little significance in the new economic dispensation. While in 1890, 3,271 natives out of a total of 4,695 landholders held real estate, this was but a meager portion of the valuable land in Hawaii.

(Stevens at 45). In addition, Native Hawaiian lands upon which taxes were collected represented 257,457 acres while non-Hawaiians controlled 1,052,492 acres. (Stevens at 45-46). By 1898, the Government and Crown Lands had been reduced from approximately 2,400,000 acres to approximately 1,800,000 acres. The majority of the 600,000 acres had passed into the hands of non-Native Hawaiians.

Hawaiian Political Economy

In gaining significant amounts of land, the American and European residents sought to develop the economy of Hawaii, ultimately through sugar cane. The initial stimulus for the sugar industry was the Civil War, when the North, cut off from its supply of southern sugar, opened as a market for Hawaii. The United States provided the only profitable market for Hawaiian sugar. However, United States protective tariffs, imposed to protect southern sugar producers at the end of the Civil War, made it difficult for Hawaii's sugar growers to compete.

By 1875, King Kal-kaua and the United States Congress had agreed upon a reciprocal trade treaty, mentioned previously, which allowed duty-free trade in both directions, lifting the tariff on Hawaiian sugar. However, when the treaty expired, the United States Congress was reluctant to renew the treaty without being granted exclusive use of Pearl Harbor. King Kal-kaua refused to surrender sovereign control over Pearl Harbor. The American and European sugar planters and business interests decided to exert greater control over the Monarchy in order to protect the sugar industry. To that end, they formed the Hawaiian League and forced King Kal-kaua to accept the Constitution of 1887, also known as the “Bayonet Constitution”. The Bayonet Constitution was so named because the Hawaiian League had at their disposal the Honolulu Rifles, an all-Caucasian 500-man militia while the Monarchy had no comparable military force.

The Bayonet Constitution made the Monarchy ceremonial, put executive powers under the control of the cabinet, put military powers under legislative control, and provided for the election of the House of Nobles. Hawaiian League members assumed the cabinet positions, effectively giving them control of the executive branch of government. In addition, voting rights were extended to all American and European males who would swear an oath of allegiance to the new Bayonet Constitution regardless of citizenship; voting was limited to those who could read and write Hawaiian or a European language; and Asian residents were disenfranchised. In addition, qualifications required voters for the House of Representatives to have paid taxes in full and voters for the House of Nobles to have a debt-free property value of \$3,000 or an annual income of \$600. Although the literacy rate among Native Hawaiians was exceptionally high (many Native Hawaiian sources of the time report over 90 percent and the Blount report estimated nearly 70 percent), the new property requirements resulted in most Native Hawaiians being excluded from voting for the elected House of Nobles and gave the Hawaiian League practical control of the legislative as well as the executive branch of government. Once in control of the government, the Hawaiian League completed negotiations on the Reciprocity Treaty of 1887 which ceded exclusive use of Pearl Harbor to the United States. (Merze Tate, *The United States and the Hawaiian Kingdom: A Political History* (1965); Kuykendall, Volume III; Native Hawaiian Rights Handbook at 9; Native Hawaiians Study Commission Report at 43).

Overthrow, Annexation and Territorial Period

In 1891, shortly after the Bayonet Constitution, King Kal-kaua died and his sister, Princess Liliuokalani came to power. Queen Liliuokalani requested the resignation of the sitting Cabinet members, stating the Constitution permitted her to do so. The Cabinet members refused to resign, claiming only the legislature could remove them, and asked the Hawaiian Supreme Court Justices to rule on whether the Queen had the authority to remove them. The Court held that the Queen was within her rights to request the resignation of the Cabinet members. The Queen immediately replaced the members of the Cabinet. Queen Liliuokalani was also openly opposed to the Bayonet Constitution and began to develop a new constitution that would return control of the government to the Monarchy and Native Hawaiians. In the United States, Congress enacted the McKinley Tariff Act of 1891, providing a subsidy to American sugar growers and placing the Hawaiian sugar industry at a severe disadvantage.

Due to these actions, both in Hawaii and in the United States, the American and European residents formed the “Committee of Public Safety” in January 1892 that aimed to gain full control of the government. The Committee expected that they would receive a sympathetic hearing by the United States Government.

Draft Report

By the 1890s there was growing support in the United States Government and military for the idea of annexing the Hawaiian Islands. In May 1892, as the Committee of Public Safety began to move towards the overthrow of the Hawaiian Monarchy, the Committee sent Lorrin Thurston to Washington to determine the views of President Harrison. Harrison and Secretary of State James Blaine were advocates of annexation. Thurston reported back that Secretary of the Navy Tracy said, “The President . . . authorizes me to say to you that if conditions on Hawaii compel you to act as you have indicated, and you come to Washington with an annexation proposition, you will find an exceedingly sympathetic administration here.” (Lorrin Thurston, *Memoirs of the Hawaiian Revolution* 231-232 (1936); William Adam Russ, *The Hawaiian Revolution*(1893-1894) (1992) (hereafter Russ); Tom Coffman, *Nation Within: The Story of America’s Annexation of the Nation of Hawaiʻi* (1998) (hereafter Coffman)).

In the span of a month, from mid-January to mid-February 1893, the Committee of Public Safety succeeded in overthrowing the Monarchy, gaining control of the government, receiving support from the United States diplomatic representative, and formulating with the Harrison Administration and forwarding to Congress an annexation treaty. (Russ; Coffman; Native Hawaiians Study Commission Report at 65-66).

- On January 14, 1893, the Queen announced her intention to abrogate the 1897 “Bayonet Constitution” and sign a new Constitution in response to a petition submitted by two-thirds of the registered voters.
- On January 15, 1893, the Committee of Public Safety voted for annexation by the United States and the same day made a request to United States Minister John Stevens for protection.
- On January 16, 1893, United States Minister Stevens ordered the United States Marines to land in Honolulu and to position themselves near the Kingdom of Hawaiʻi government buildings, ostensibly to protect American citizens and property.
- On January 17, 1893, the Committee of Public Safety took control of the government building, declared an end to the Monarchy, and proclaimed the existence of a Provisional Government. United States Minister Stevens immediately recognized the Provisional Government, resulting in Queen Liliʻuokalani declaring that she was relinquishing authority to the “superior force of the United States of America” (she specifically did not recognize the Provisional Government) until such time as the United States shall “undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.”
- On February 1, 1893, United States Minister Stevens went on to put the Provisional Government under the protection of the United States by raising the United States flag.
- By February 15, 1893, the Provisional Government had forwarded a treaty of annexation to the United States Government that President Harrison submitted for consideration to Congress.

The plans of the Provisional Government were delayed however, because Grover Cleveland had recently been elected and was suspicious of both the methods used by the Committee of Public Safety and the

involvement of the United States Minister. He withdrew the treaty from consideration by Congress and instead sent former Congressman James Blount to Hawaiʻi to investigate the overthrow and the actions of the United States Government representative. The Blount report repudiated the actions of United States Minister Stevens and the United States Marines who supported the overthrow of the Monarchy. As a result, President Cleveland reported to Congress that the government of a peaceful and friendly people was overthrown by the acts of a representative of the United States and he called for Congress to restore the Monarchy. President Cleveland stated, “by an act of war committed with the participation of a diplomatic representative of the United States and without the authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair.” (Intervention of United States Government in Affairs of Foreign Friendly Governments, H.R. Rpt. No. 243, 53rd Cong., 2d Sess. at 14 (1893)).

In an attempt to act on these recommendations, Secretary of State W. Q. Gresham instructed United States Minister to Hawaiʻi Willis, to convey the position of the Cleveland administration to Queen Liliʻuokalani with the condition that she grant full amnesty to all who participated in the overthrow. Willis was instructed to inform the Provisional Government of President Cleveland’s intent and to arrange for the Provisional Government to relinquish constitutional authority to the Queen. The Provisional Government refused to surrender their authority and restore the Queen to her throne. President Cleveland did not desire, nor did he have the support of Congress, to engage United States military forces to declare war against the American citizens who controlled the Provisional Government. Moreover, the United States Senate Foreign Relations Committee conducted hearings in Washington D.C. from December 27, 1893 through February 26, 1894 and issued a report referred to as the Morgan Report that refuted the Blount report and exonerated United States Minister Stevens and the United States Marines of any wrongdoing or illegal acts. (Senate Committee on Foreign Relations. Report from the Committee on Foreign Relations and Appendix in Relation to the Hawaiian Islands, February 26, 1894, S. Rpt No. 227, S. Exec. Doc. No. 13, 53rd Cong., 2d Sess. (1894) (also known as the Morgan Report); Senate Committee on Foreign Relations, Hawaiian Islands. Report of the Committee on Foreign Relations With Accompanying Testimony and Executive Documents Transmitted to Congress from January 1, 1893 to March 19, 1894, Volumes I and II, (1894); Stevens at 264-267).

In Hawaiʻi, the Provisional Government continued to strengthen its position by forming the Republic of Hawaiʻi on July 4, 1894, naming Sanford Dole as President, and writing a new Constitution. The Constitution was similar to the Bayonet Constitution that limited the ability of Native Hawaiians to vote through property qualification requirements but also required all Native Hawaiians to swear an oath of allegiance to the new Constitution. Many Native Hawaiians refused to swear allegiance to a Constitution written by those who had overthrown the elected government of Hawaiʻi. (NoeNoe K. Silva, *K~naka Maoli Resistance to Annexation*, #Æiwi: A Native Hawaiian Journal v.1 (December 1998)).

Queen Liliʻuokalani continued attempts to restore the Monarchy, including lobbying the United States Government. In 1895, an unsuccessful insurrection was mounted by supporters of the Queen in an attempt to restore the Monarchy. As a result of the insurrection, Queen Liliʻuokalani was arrested for misprision of treason (knowledge of a treasonous act) and while under house arrest formally abdicated and renounced her claim to the throne. She later wrote,

Draft Report

It is a rule of common law that the acts of any person deprived of civil rights have no force nor weight, either at law or in equity; and that was my situation. Although it was written in the document that it was my free act and deed, circumstances prove that it was not; it had been impressed upon me that only by its execution could the lives of those dear to me, those beloved by the people of Hawaii, be saved, and the shedding of blood be averted. (Liliuokalani, *Hawaii's Story by Hawaii's Queen* at 276 (1898, reprint 1977) (hereafter *Liliuokalani*)).

Another significant action that caused further degradation in the Native Hawaiian culture was the restriction of the use of the Hawaiian language in schools. In 1896, the Republic of Hawaii mandated the use of English in public education, resulting in children and teachers being forbidden to speak the Hawaiian language on school campuses. Native Hawaiians tell of being punished as children for speaking Hawaiian and of teachers going to homes and discouraging the use of Hawaiian. The ultimate result of these policies was the near extinction of the Hawaiian language and with it a strong oral tradition, a key component of the Native Hawaiian cultural framework. The restriction against the use of Hawaiian in the schools remained in place until 1986 when the teaching and use of Hawaiian was once again permitted in public schools. (Haw. Rev. Stat. § 298-2). By 1987, the Honolulu Magazine wrote that there were only 2,000 native speakers of Hawaiian. Most were in their 60s and 70s and only 30 were under 5 years old. (John Heckathorn, *Ua Hiki Anei Ke Ola Ka ʻŌlelo Hawaiʻi? Can Hawaiian Language Survive*, Honolulu Magazine 21:10 (April 1987)).

With the election of President McKinley in 1896, the pro-annexation forces gained strength. The Republic of Hawaii continued to push for annexation although many Native Hawaiians were opposed. In September 1897, the “Petition against the Annexation of Hawaii Submitted to the U.S. Senate in 1897 by the Hawaiian Patriotic League of the Hawaiian Islands”, expressed the views of Native Hawaiians. The petition, signed by 21,169 people (more than half of the Native Hawaiian population) from Kauai, Maui, Hawaii, Molokai, Oahu, Lanai, and Kahoolawe provides evidence that Native Hawaiians were against annexation and wanted independence under a Monarchy. (Lilia K. Aholo, Memorial of Lilia K. Aholo: Secretary-in-Chief of the Women's Patriotic League of the Hawaiian Islands and 10,890 Other Native Hawaiian Women Remonstrating Against the Annexation of the Hawaiian Islands to the United States, 55th Cong., 2d Sess. 1897. National Archives Record Group 46/Box 116; Nalani Minton, *Kāhuna: the Hui Aloha ʻŌlelo in Anti-Annexation Petitions, 1897-1898*, compiled by Nalani Minton & Noenoe Silva (1998); *Petition Against the Annexation of Hawaii Submitted to the U.S. Senate by the Hawaiian Patriotic League of the Hawaiian Islands (1897)* microfilmed on NAIL Microfilm Publications, Microfilm ID No. M1897 (National Archives)).

Consistent with the wishes expressed by Native Hawaiians, the Treaty of Annexation failed to pass the United States Senate by a two-thirds majority vote. However, by 1898, with the outbreak of the Spanish-American War in both the Pacific and Caribbean, the Newlands Joint Resolution of Annexation (Annexation Resolution) was offered by the pro-annexation forces and passed by a simple majority of the United States Senate and House of Representatives, thus becoming the instrument used to effect the annexation of the Republic of Hawaii. The constitutionality of the use of a Joint Resolution in lieu of a Treaty to annex Hawaii was a contentious issue at the time. Pro-annexation groups claimed that the

acquisition of Texas through a Joint Resolution provided the necessary basis for a similar action on Hawaiʻi. However, the residents of Texas had clearly stated through a plebiscite that they supported annexation. (Native Hawaiians Study Commission Report at 102-106). This was clearly not the case in Hawaiʻi, where no public vote was taken and the petition against annexation provides evidence that many Native Hawaiians would have voted against annexation if provided the opportunity to do so. (Russ; Coffman).

The Ceded Public Lands Trust

As part of the Annexation Resolution, the Republic of Hawaiʻi (without the support of Native Hawaiians) ceded sovereignty of the islands and conveyed absolute title to all Government and Crown Lands (henceforth called the Ceded Lands), generally estimated at 1,750,000 - 1,800,000 acres^{3/} to the United States. The Apology Resolution describes these actions,

Whereas the Newlands [Annexation] Resolution effected the transaction between the Republic of Hawaiʻi and the United States Government. Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their Monarchy or through a plebiscite or referendum.

(Pub. L. No. 103-150, 107 Stat. 1510). The Annexation Resolution required that all revenue from proceeds of the Ceded Lands (previously the Crown and Government Lands), except that used or occupied for civil, military, or naval purposes of the United States or for local government use, be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes. (Native Hawaiian Rights Handbook at 15; Native Hawaiians Study Commission Report at 105).

An exception in the Annexation Resolution allowed the removal of lands from the Ceded Lands Trust for government use, resulting in significant loss of land and income from the Ceded Lands Trust over the years. In 1899 President McKinley issued the first of several Executive Orders setting aside 15,000 acres of Oʻahu's public lands for military use. In 1908, the United States began to develop Puʻuloa into Pearl Harbor - dredging the channel, constructing a dry dock, barracks, warehouses, an ammunition depot, a submarine base, a radio center, and a hospital. By 1930, the harbor was a major industrial base for the servicing of the United States Pacific Fleet. At the same time, the United States Army established bases

^{3/}The figure of 1,800,000 acres in the Apology Resolution is based on the acreage of the Government and Crown Lands at Ka Mahele and takes into account land transactions related to these lands, 1848-1898. Estimates that place the amount of Ceded Lands at approximately 2,000,000 acres are inclusive of emerged and submerged lands of the Northwestern Hawaiian Islands totaling 254,418.10 acres. These islands and submerged lands were claimed by the Kingdom of Hawaiʻi after Ka Mahele. The agent of public lands for the Republic of Hawaiʻi, J. F. Brown, submitted a report to the United States Senate, dated December 12, 1899, that outlined land transactions related to Crown and Government Lands from the 1848 Mahele through December 1899 and identified 1,751,400 acres in 1899. Based on this information, it is likely that the Republic of Hawaiʻi ceded to the United States 1,751,400 acres of Crown and Government Lands on the major Hawaiian Islands and an additional 254,418.10 acres of emerged and submerged lands in the Northwestern Hawaiian Islands.

on the Ceded Lands under its control at Lʻahi (Diamond Head) for Fort Ruger; at Waikīkī for Fort DeRussy; at Kalihi for Fort Shafter; and in Wahiawā and the Waiʻanae mountains for Scholfield Barracks.

On occasion lands were withdrawn from the Ceded Lands Trust for more altruistic reasons. For example, the sacred burial ground of the Kamehameha Chiefs at Maunaloa in Nuʻuanu, Oʻahu was withdrawn to protect it from disturbance or desecration and the legislation provided that only the Hawaiian flag would be flown on the burial ground. (House, Congressional Debates on Hawaii Organic Act. House Cong. Rec. v. 22 (7) at 5856-5857 (May 22, 1900)). The practice of withdrawing lands for government use continued up until statehood, by which time the United States Government had withdrawn an estimated 373,719.58 acres from the Ceded Lands Trust. (Native Hawaiian Rights Handbook at 27-30; Native Hawaiians Study Commission Report at 108-118).

The Hawaiian Organic Act of 1900 formally made the Hawaiian Islands a territory of the United States and retained most of the laws created under the Kingdom of Hawaiʻi, including ahupuaʻa tenant land rights, and the recognition of Hawaiian tradition and custom. (An Act to Provide for a Government for the Territory of Hawaii (Organic Act), 31 Stat. 141, 56th Cong. Sess. 1 (April 30, 1900)). “Possession, Use, and Control” of the Ceded Lands (previously Crown and Government Lands) was given to the territory consistent with the land trust provisions of the Annexation Resolution. However, the Federal Government continued to hold title and to reserve the right to withdraw lands. Amendments to the Organic Act in 1910 provided for preferred leasing of Ceded Lands for homesteading, limited to 5 years the time a non-homesteading lease could be issued, limited the size of agricultural leases to 1,000 acres, and allowed a petition of twenty-five citizens to obtain title to agricultural lands for homesteading (including land with an active agricultural lease). These provisions prevented the sugar and ranching interests from extending their long-term, low-cost leases of Ceded Lands and threatened loss of high quality sugar and ranching lands to homesteaders.

Also in 1910, Queen Liliʻuokalani sued the United States to reclaim the Crown Lands. She was unsuccessful, because the Hawaiʻi Supreme Court held that the Crown Lands were associated with the Monarchy not the individual and with the end of the Monarchy, ownership of the lands was asserted by the government which supplanted the Monarchy. (*Liliʻuokalani v. United States*, 45 Haw. Ct. Cl., 418 (1910); Native Hawaiian Rights Handbook at 16).

Hawaiian Home Lands

On July 9, 1921, the United States enacted the Hawaiian Homes Commission Act (HHCA) to set aside approximately 200,000 acres of Ceded Lands into the Home Lands Trust for homesteading. (Hawaiian Homes Commission Act, Pub. L. No. 67-34, 42 stat. 108). The proponents of the HHCA intended that the designated Home Lands would enable Native Hawaiians to return to their lands to facilitate self-sufficiency and cultural preservation. However, powerful agricultural interests in Hawaiʻi lobbied Congress to modify the HHCA to protect their interests. The resulting legislation protected certain Native Hawaiian rights by making 200,000 acres available for homesteading by Native Hawaiians, preventing alienation of the trust lands, providing for adequate water, and providing assistance to Native Hawaiians in starting farming operations (Native Hawaiian Rights Handbook at 17; A Broken Trust The Hawaiian Homelands

Draft Report

Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians, Hawaiian Advisory Committee to the United States Comm'n on Civil Rights at 1 (1991) (hereafter Broken Trust Report)). However, changes in the final legislation significantly altered the original intent of the initiative to set aside the prime Ceded Lands for all Native Hawaiians to homestead. The most valuable first and second class agricultural lands would continue to be leased out on a long-term low-cost basis to the sugar plantations and ranches. Homesteading on the Ceded Lands by the general public was eliminated. The Organic Act provisions limiting non-homesteading lease size to 1,000 acres and requiring homesteading on any Ceded Lands when demanded by a petition of 25 citizens were repealed. Instead, homesteading would be limited to 200,000 acres of mostly third and fourth class agricultural lands for Native Hawaiians, of half Hawaiian ancestry, for 99 years at \$1.00 a year. The revenues generated from leasing first and second class lands to plantations and ranches were to go into a revolving fund to implement the homesteading program. (Davianna Pūmaika'i McGregor, *ʻŌia Hoʻopulapula: Hawaiian Homesteading*, 24 Hawaiian Journal of History 1 (1990) (hereafter McGregor, *ʻŌia Hoʻopulapula*))

An official description of the lands chosen for homesteading under the HHCA was compiled by Albert Horner, sugar expert for the Territorial Government. It revealed that most of the lands lacked water for irrigation or domestic use. Most of the lands were rough, rocky, and dry, including 55,000 acres covered with barren lava and another 7,800 acres on steep mountainous slopes (See Table 2).

In the original HHCA proposal, Prince Jonah Kalanianaʻōle KāhīʻŌi and other Native Hawaiian leaders sought to have the prime Crown Lands designated for homesteading by Hawaiians, without any blood quantum restriction. Not only did the sugar interests change the type of land to be homesteaded, they also sought to restrict homesteading to only those with 100 percent Hawaiian ancestry. The Native Hawaiian leaders countered with a proposed blood quantum requirement of one-thirty-second Native Hawaiian. Finally a compromise was reached requiring homesteaders to have at least one-half Native Hawaiian ancestry. (Prince J.K. Kalanianaʻōle, *The Story of Hawaiians*, The Mid-Pacific Magazine, Vol. XXI, No. 2 (February 1921); McGregor, *ʻŌia Hoʻopulapula*).

Draft Report

Table 2. Potential of Hawaiian Homelands from Horner's description.

Land	Acreage	Land Potential
Hawai'i		
Kam~oa-Pu#u#eo	11,000	Useful for grazing only for a few months a year. No water for domestic use.
Pu#ukapu	1,200	Land adjacent to site where a Hawaiian rehabilitation project had been attempted and had failed. Most suitable of available lands for homesteading.
Kawaihae	10,000	Same as Kamaoa, except less soil covering rocks.
Pauahi	750	Same as above.
Kamoku-Kapulena-Nienie	12,350	Third class agricultural in part, and balance second class pasture. Water for domestic use would have to be piped in some miles.
Humu#ula	53,000	Fourth class grazing, no water supply; beyond reach of water, almost entirely lava waste with no agricultural land.
Pi#ihonua	2,000	Second class agricultural; annual rainfall 250 inches.
Ka#ohe-Maku#u	2,000	Rocky, almost solid lava; fertile soil, well situated for fishing.
Kaua'i		
Upper Waimea	15,000	Third class grazing; valueless without fattening lands, rough, rocky, very dry; could produce crops if \$1 million spent to bring water.
Moloa#a	2,500	No agricultural or grazing lands.
Anahola & Kamalomalo#o	5,000	Second class agricultural land; would require irrigation; large part planted to cane and irrigated.
Maui		
Kahikinui	25,000	Third class grazing when held in large tracts; most of land can be grazed only few months of year due to frequent dry spells; steep and rocky.
Kula	6,000	Second class agricultural land; crops can be expected one year out of three.
Moloka'i		
P~l~#au	11,400	With irrigation would produce abundant crops, without water is poor grazing land; irrigation project estimated to cost \$2 million.
Kapa#akea	2,000	Steep part of mountain; worthless for agriculture
Kamiloloa I/ II	3,600	Same.
Makakupa#ia	2,200	Same.
Kalama#ula	6,000	Upper half, second class agricultural land; lower same as Pala'au.
O#ahu		
N~n~kuli	3,000	Rough, rocky, dry; no value except for its proximity to sea, and fishing rights.
Lualualei	2,000	Same.
Waim~nalo	4,000	Second class agricultural or cane lands, with water might be first class.

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The Territorial Government, and later the State Government, was given responsibility for managing the Home Lands Trust. Even though administration and management of the Home Lands Trust was given to the Territory and later the State, the United States acknowledged a responsibility with regard to the Home Lands Trust from 1921 to the present. The intent of Congress in enacting the HHCA and its view of a United States responsibility can be seen in the report of the House Committee of Territories:

Mr. WISE [Senator John Wise, Territorial Legislature]. The Hawaiian people are a farming people and fishermen, out-of-door people, and when they were frozen out of their lands and driven into the cities they had to live in the cheapest places, tenements. That is one of the big reasons why the Hawaiian people are dying. Now, the only way to save them, I contend, is to take them back to the lands and give them the mode of living that their ancestors were accustomed to and in that way rehabilitate them. We are not only asking for justice in the matter of division of the lands, but we are asking that the great people of the United States should pause for one moment and, instead of giving all your help to Europe, give some help to the Hawaiians and see if you can not rehabilitate this noble people.

Secretary LANE [Secretary of the Interior Lane]. One thing that impressed me there was the fact that the natives of the islands, who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty. . . . [T]hey are a problem now and they ought to be cared for by being provided with homes out of the public lands; but homes that they could not mortgage and could not sell.

(House Committee on Territories, Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawaii and on the Proposed Transfer of the Buildings of the Federal Leprosy Investigation Station at Kalawao on the Island of Molokai to the Territory of Hawaii, H.R. Doc. No. 839, 66th Cong., 2d Sess. at 4 (1920) (hereafter H.R. Doc. No. 839 (1920))).

In addition to the initial failure of the HHCA to provide good quality lands for homesteading purposes, implementation of the HHCA can only be described as a dismal failure. The Home Lands Trust languished for years, beset with inadequate funding and administration problems that restricted it from addressing the housing and economic needs of Native Hawaiians. Lack of funding by the Federal Government throughout the territorial period, and by the State until recently, significantly decreased the ability to administer the program, settle Native Hawaiians on the land, provide adequate water, and assist in initiating farming operations.

To obtain funds to administer the Home Lands Trust, the HHCA permits the general leasing of lands identified as “not needed for homesteading”. Throughout the history of the HHCA, there has been and still is a long waiting list of native Hawaiians (native Hawaiians are only those Native Hawaiians that meet the 50 percent blood quantum requirement as defined in the HHCA) who have applied to obtain Home Lands leases (currently there are approximately 19,000 individuals who have filed a total of nearly 30,000 applications). Still, the general leasing provision was implemented widely, resulting in large acreage being leased to non-beneficiaries, some at tenant-favorable rates so that little income was generated. In recent

Draft Report

years significant progress has been made in recovering lands and making them available for homesteading. However, the large backlog has resulted in a near insurmountable problem. As of 1997, 70 years after the HHCA was passed, a mere 20.5 percent of the available land was actually being homesteaded by native Hawaiians (as defined in the HHCA), while 24.9 percent was subject to general lease, 12 percent was subject to licenses, and 42.6 percent was used for “other” purposes (“other” includes revocable permits and Executive Orders, as well as vacant unencumbered lands). (Department of Hawaiian Home Lands, Annual Report for FY 1997-1998 at 15 (1998) (hereafter DHHL Annual Report)).

In addition to lands being unavailable for homesteading because of widespread granting of general leases, during the time Hawaii was a territory, 13,578 acres of Home Lands were transferred to other government agencies through 29 Executive Orders although the Governors had no authority to do so. (Broken Trust Report at 9). In other cases, Home Lands were exchanged for lands of lesser value or of unknown value since appropriate valuations were not performed, and some lands were leased at low values, often less than \$1 per acre per year.

Many of the Home Lands that were transferred, exchanged, or leased were flat and arable - the best of the Home Lands. For instance, 1,356 acres at Lualualei on Oahu were set aside for the United States Navy in 1930 and 1933 through Executive Orders of the Governor. These lands comprised one-fifth of all Home Lands on Oahu that were suitable for homesteading, the island with the greatest demand for residential homelots. As of June 30, 1998, a total of 7,503 native Hawaiians (as defined in the HHCA) were on the waiting list to receive Home Lands on Oahu, including 6,133 waiting for residential lots and 1,370 waiting for agricultural lots. (Broken Trust Report at 18; DHHL Annual Report at 11). Other examples of Federal use of Home Lands include the United States Army occupying 295 acres on Pihakuloa under a 65-year general lease at \$1 for the entire term and the Federal Aviation Administration controlling 54 acres at Keaukaha Hilo for a similar 65-year lease at \$1 for the entire term. (Broken Trust Report at 19). In 1995, the United States acted to resolve the withdrawal of these lands by enacting the Hawaiian Home Lands Recovery Act (HHLRA) and in 1998, signing a Memorandum of Agreement with the State of Hawaii that provided for the return of 960 acres to the Home Land Trust.

Native Hawaiians were alienated from their lands in other ways in addition to inappropriate leasing or transfer of Home Lands. During the early years of the Territorial period, large exchanges of Ceded Lands occurred as well. In one particularly egregious example in 1907, all the Ceded Lands (48,000 acres) and all water rights on Lanai were exchanged to a single individual in return for 296 acres (293 acres on Tantalus and 3 acres in Honolulu). Such exchanges were contrary to the appropriate uses expressed in the Annexation Resolution and the Organic Act which set aside the Ceded Lands to provide homesteading opportunities. Clearly, the 48,000 acres of public lands exchanged provided significantly more parcels for homesteading than the 296 acres substituted in the exchange. In addition, it is likely that the Ceded Lands were undervalued, further depriving the people of their rightful income. (Robert Horowitz, Hawaii Legislative Reference Bureau, *Public Land Policy in Hawaii: Land Exchanges* at 22-29 (1964)).

Even in cases where Native Hawaiians retained title to their lands, the activities of plantation owners made it difficult, and often impossible, for them to remain. The security of a stable American market for Hawaiian sugar after Annexation led sugar planters to expand the number of acres planted in sugar and to invest in an infrastructure to accomplish that. Of critical importance to the expansion of the industry was the

development of vast irrigation systems which carried millions of gallons of fresh water from the wet windward sides of the islands to the dry leeward plains. On Oʻahu, the planters constructed the Wai-hole tunnel and ditch system from 1913 to 1916. Ultimately, stream waters from Waiheʻe to Kahana, on windward Oʻahu were diverted for the production of sugar on the dry ʻEwa plains. On Maui, additional ditch systems were constructed to carry the waters of the Koʻolau streams from Nāhiku through Haʻikā over into Puʻunāʻu from 1903 to 1920. On Hawaiʻi, the upper and lower Hāmākua Ditch systems were constructed in 1906 and 1910, respectively, and the Kohala Ditch from 1905-1906. (John Anthony Mollett, *Capital in Hawaiian Sugar: Its Formation and Relation to Labor and Output, 1870-1957*, University of Hawaii Agricultural Economics Bulletin 21 (1961)). The impact of these irrigation systems upon rural taro farmers was devastating. Cut off from the free flow of stream waters into their loʻi kalo or taro patches, many had to give up taro farming and move to cities to find new livelihoods. Some families stopped paying taxes on their rural lands when they moved to cities and as a result eventually lost ownership of their ancestral lands through adverse possession by plantations and ranches. One example of this occurred on Lānaʻi, where, in 1923, one corporation first purchased the 48,000 acres that had previously been removed from the Ceded Lands through an exchange of lands (as described earlier). The corporation then acquired ownership to most of the remaining lands on Lānaʻi (totalling 98 percent of the island) through a series of quiet title and other legal proceedings, including adverse possession, by 1928.

Statehood

In 1959, a Hawaiʻi statehood plebiscite asked voters, "Shall Hawaiʻi be admitted into the Union as a state?" Any American citizen who had resided in Hawaiʻi for one year was eligible to vote. The result of the plebiscite was 132,938 votes in favor of statehood and 7,854 opposed. Prior to becoming a state, Hawaiʻi was included in Article 73 of the United Nations Charter, "Declaration Regarding Non-Self-Governing Territories." When Hawaiʻi became a state it was removed from the United Nations list of Non-Self-Governing Territories. As evidence for its removal, the United States submitted a memorandum to the United Nations Secretary General, the text of the Congressional Act admitting Hawaiʻi into the United States as a state, a Presidential Proclamation, and the text of Hawaiʻi's State Constitution.

The Hawaiʻi Admission Act of 1959 (Admission Act) transferred public lands (the Ceded Lands), excluding certain lands held by the Federal Government, to the State to manage. (Hawaii Statehood Admissions Act, Pub. L. No. 86-3, 73 Stat. 4 (1959)). By the time of statehood in 1959, the total amount of Crown and Government Lands ceded to the State by the United States Government was only 1,129,274 acres plus 200,000 acres as Hawaiian Home Lands. Most of the rest of the original 1,750,000-1,800,000 acres ceded by the Monarchy was withheld by the Federal Government using the withdrawal exception provided in the Annexation Act and continued in the Admission Act. During the time Hawaiʻi was a territory, the United States set aside 287,078.44 acres and leased an additional 117,412.74 acres. The Admission Act provided for a five-year time period when the United States could set aside additional lands and could also return excess lands to the State. At the end of the five years, the United States had set aside 87,236.55 acres of 117,412.74 acres of leased lands and continued to lease 30,176.18 acres. The United States returned to the State only 595.41 acres as excess lands. Thus, by 1964, the United States had withdrawn 373,719.58 acres from the Ceded Lands and was continuing to lease an additional 30,176.18 acres. Of these lands, 227,972.62 acres was in National Parks and most of the rest was in military use. The Ceded Lands Trust was not compensated for the loss of these lands to the Federal Government. In 1964,

Congress enacted a Reconveyance Act, that eliminated the five-year time limit for the return of excess lands to the State but also excluded the National Park lands from return. (Pub. L. No. 88-233, 77 Stat. 472 (1964)). The exemption of National Park lands left approximately 145,746.9 acres controlled by the Federal Government that could theoretically be declared excess lands and returned to the State. From 1964 to 1989, a mere 1,906 acres had been returned to the Ceded Lands Trust. This left, as of 1989, approximately 143,840 acres controlled by the Federal Government that were eligible to be returned to the State under the Reconveyance Act. (Pub. L. No. 88-233, 77 Stat. 472). (Native Hawaiian Rights Handbook at 27-30; Native Hawaiians Study Commission Report at 108-118). More recently, in 1994, Native Hawaiians succeeded in their attempts to have the island of Kaho#olawe, encompassing 28,800 acres, returned to the State after fifty years of use by the military for bombing practice.

The Admission Act required that the Ceded Land Trust be used for five purposes and created a right in the United States to sue the State of Hawai#i for breach of trust if the Ceded Lands Trust was used for other purposes. The statute provides that:

. . . the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public education institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such a manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.

(Pub. L. No. 86-3, 73 Stat. 4). The Admissions Act had the effect of restricting use of the Ceded Land Trust for the betterment of those native Hawaiians that met the 50 percent blood quantum requirement as defined in the HHCA, excluding those Native Hawaiians that did not meet the blood quantum requirement. The State opted to focus Ceded Land Trust funds on public education, providing little funding to native Hawaiians (as defined in the HHCA).

As a condition of statehood, the State was required to include the HHCA provisions in the State Constitution and was given responsibility for managing the Home Lands Trust for the purposes of homesteading by native Hawaiians (as defined in the HHCA). The Admission Act provided that the United States could bring suit against the State if the State used the Home Lands Trust for any purposes other than those stated:

. . . the Hawaiian Home Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, . . . subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) . . . the Hawaiian home-loan fund, the Hawaiian home-operating fund and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances

authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the “available lands”, as defined by said Act, shall be used only in carrying out the provisions of said Act.
(Pub. L. No. 86-3, 73 Stat. 4).

The United States has never acted to enforce the trust protections against the State. The United States’ view on the Federal Government’s responsibility to Native Hawaiians has changed over the years. First, in 1979, Deputy Solicitor Frederick Ferguson responded to a letter inquiring what role the United States held with regard to Native Hawaiians in the context of the HHCA and the subsequent transfer of lands under the HHCA to the State of Hawaii through the Admission Act. Despite the transfer of lands and administrative responsibility to the state in 1959, the Deputy Solicitor reasoned that the role of the United States under the HHCA remained that of a trustee as evidenced by the fact that the United States retained the authority to enforce the provisions of the HHCA. The Solicitor specifically stated that “[a]lthough the United States transferred the lands and the responsibility for administering the act to the state under the Admission Act, the Secretary of the Interior retained certain responsibilities . . . which should be considered to be more than merely ministerial or nondiscretionary.” (letter from Frederick Ferguson, Deputy Solicitor U.S. Department of the Interior to the U. S. Commission on Civil Rights at 3 (Aug. 27, 1979)). The letter further stated “it is the Department’s position that the role of the United States under section 5(f) [of the Admissions Act] is essentially that of a trustee...”. (*Id.*).

Then, on January 19, 1993, Solicitor Thomas Sansonetti overruled the Department’s prior position that the United States was a trustee with regard to Native Hawaiians under the HHCA. He issued an opinion that set forth the broad proposition that the United States had little responsibility under the HHCA, which caused a great deal of controversy in the Native Hawaiian community. (Memorandum from Thomas Sansonetti, Solicitor, U.S. Department of the Interior to the Counselor to the Secretary and Secretary’s Designated Offices for the HHCA, The Scope of Federal Responsibility for Native Hawaiians Under the Hawaiian Homes Commission Act (M-36978) (Jan. 19, 1993)). As a result of the controversy surrounding the Sansonetti opinion and pending litigation in the Federal court on whether there was a Federal trust responsibility to Native Hawaiians, Solicitor John Leshy withdrew the Sansonetti opinion in its entirety on November 15, 1993. (Statement of John Leshy, Solicitor, U.S. Department of the Interior (Nov. 15, 1993)). Because the question of a Federal trust responsibility and an alleged corresponding duty to sue on behalf of Native Hawaiians was in litigation, the Solicitor also stated, “[t]o avoid confusion, I am at the same time disclaiming any future Departmental reliance upon an August 27, 1979, letter of the Deputy Solicitor (overruled in the [Sansonetti] opinion) to the extent it could be construed as inconsistent with the position of the United States in the litigation.” That litigation resulted in the decision in *Han v. United States Department of Justice*, 45 F. 3d 333 (9th Cir. 1995) where the court ruled: “Assuming without deciding that a general trust . . . relationship exists between the United States and Native Hawaiians similar to that between the United States and recognized Indian tribes, the [Hawaiian] admission act does not impose any duty upon the [Federal] government to bring an enforcement action against the State of Hawaii . . .” Subsequently, the United States took the clear position that the United States has a trust responsibility

to Native Hawaiians. *See* the Brief of Amicus Curiae United States at 22, *Rice v. Cayetano* 120 S. Ct. 1044 (2000). In that brief, the Solicitor General stated that: “Congress does not extend benefits and services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once-sovereign nation as to whom the United States has a recognized trust responsibility.” (Brief of Amicus Curiae United States at 22, *Rice v. Cayetano* 120 S. Ct. 1044 (2000)). The Supreme Court did not decide the trust responsibility question in *Rice*, but the majority did note that: “It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes.” (120 S. Ct. at 1057).

Constitutional Convention of the State of Hawaii

In 1978 a Constitutional Convention was called to review and revise the State Constitution, including addressing Native Hawaiian issues. The result was an amendment to the Constitution that provided native Hawaiians (those meeting the 50 percent blood quantum as defined in the HHCA) with a prorata share (later set at 20 percent) of the revenues from the Ceded Lands Trust and created the Office of Hawaiian Affairs (OHA) to manage the revenues. (Haw. Const. of 1978, Art. 12). The creation of OHA provided the first opportunity in nearly 100 years for Native Hawaiians to regain some control of their affairs. OHA is run by nine trustees who manage all real and personal property as a trust for Native Hawaiians. The trustees are elected through a Native Hawaiian-only election process (approximately 100,000 Native Hawaiians are registered to vote) with four at large representatives and a representative from each of Oahu, Kauai and Niihau, Maui, Molokai and Lanai, and Hawaii. OHA serves all Native Hawaiians, but the Ceded Land Trust funds are designated only for native Hawaiians (as defined in the HHCA). Another important change made to the Constitution in 1978 was the establishment of the Hawaiian language, along with English, as an official language of Hawaii. (Haw. Const. of 1978, Art. 15). By this time, the Hawaiian language was falling into disuse, spoken mostly by Native Hawaiian residents of Niihau and elders on the other islands. Prior to the mandating of English in schools in 1896, over 100 Hawaiian language newspapers were established and school curricula was taught in Hawaiian.

Native Hawaiian Cultural Renaissance and Self-Determination Movement

Concerned by the threat of extinction of the Hawaiian language, in 1983, Hawaiian language professors and students at the University of Hawaii visited Aotearoa (New Zealand) and were inspired by the efforts of the Maori people to rescue their language through Maori immersion preschools. These professors founded Pānana Leo (a language nest) Hawaiian language immersion preschools in Hawaii. In 1984, the first school was opened in Kekaha, overcoming the lack of Hawaiian books and other teaching material and the state law mandating use of English. By 1995, nine Pānana Leo Hawaiian Immersion preschools had a total enrollment of 181 students. In addition, this group successfully pressed for changes to allow the Hawaiian language to be restored as a medium of instruction in public schools. In 1986, legislation was enacted that, after 90 years, allowed the use of Hawaiian as a medium of instruction in public schools. In 1987, the Board of Education established the Hawaiian Language Immersion Program. By the 1999-2000 school year Ka Papahana-Kaiapuni Hawaii (public education Hawaiian Language Immersion Program) had approximately 1750 students enrolled in 18 schools. There are now over 1700 new native speakers of Hawaiian ranging from pre-school to seniors in high school. Through the dedicated efforts of the

professors, teachers, parents and Kāpuna (elders) on every island, the Hawaiian language has started on the long road to revival.

Numerous Native Hawaiian groups have organized over the years to address Native Hawaiian issues and concerns. In 1976, Native Hawaiians began pressing for the return of the island of Kahoʻolawe, which had been withdrawn from the Ceded Lands for United States military use. After years of persistent protests, occupations, arrests, litigation, negotiation, rededication of cultural sites, and re-establishment of religious ceremonies, and decades of military use, in 1990, President Bush directed the Secretary of the Navy to stop the bombing. The United States military was later required to withdraw from Kahoʻolawe, return Kahoʻolawe to the State of Hawaiʻi, and clear 100 percent of the surface ordnance and 30 percent of the subsurface ordnance. (Department of Defense Appropriations Act, Title X, Pub. L. No. 103-139, 107 Stat. 1418 (1993)). In 1994, the island, encompassing 28,800 acres, was returned to the State of Hawaiʻi. In 1993, the State of Hawaiʻi enacted legislation to reserve the island and two miles of surrounding waters for cultural customs and practices. The law also bans commercial uses of the area and provides that: “[u]pon its return to the State, the resources and waters of Kahoʻolawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaiʻi.” (Haw. Rev. Stat. § 340-2). To date, the cleanup activity has fallen far short of this goal, with only a small percentage of the ordnance expected to be cleared using currently available funding.

In rallying around protection of the island of Kahoʻolawe, the traditional Native Hawaiian value of Aloha ʻĀina (love of the land) gained prominence and rural communities, strongholds of traditional Native Hawaiian subsistence lifestyles, gained new significance. One example of this is the return of taro farming on windward Oʻahu. When the last sugar plantation in leeward Oʻahu shut down in the 1990s, taro farmers on windward Oʻahu petitioned the Hawaiʻi State Water Commission to stop diverting the waters of the Wai-hole and Waikāne streams. Only half of the water continued to be diverted, and the other half was allowed to flow into the Wai-hole stream. Native stream-life returned, marine life in Kāneʻohe Bay became more abundant, and farmers opened taro terraces which had lain dry and overgrown with brush for decades. A new generation of Native Hawaiians, including local youth, are planning to pursue livelihoods involving the cultivation of taro, as their grandparents had done.

In addition, traditional navigational arts and skills have been revived with the transpacific voyages of the Polynesian Voyaging Society on the Hōkūleʻa, the Hawaiʻi Loa, and the Makaliʻi. Lāʻau Lapaʻau, traditional herbal and spiritual healing practices have been recognized as valid holistic medicinal practices. Hawaiian music has evolved into new forms of expression and gained greater popularity. The number of Nā hula schools which teach traditional Hawaiian dance and chant has increased.

In this climate of Native Hawaiian cultural rejuvenation, several new groups have organized in recent years to promote Native Hawaiian rights to self-determination and self-governance. These groups are based on a long history of organizations that have actively worked to promote and protect Native Hawaiian culture. They have their roots in the actions of Queen Liliʻuokalani over 100 years ago. The Queen’s motto, “Onipaʻa” (to remain steadfast) was embraced as a call to persevere and pursue the right to exist as a people - to live practice and perpetuate the language, culture, science, and religion of the ancestors. (Liliʻuokalani). The groups seek a variety of actions ranging from Federal recognition, to self-determination,

Draft Report

to complete independence. In 1988, several groups held a Native Hawaiian Rights Conference and a self-governance resolution was adopted. The resolution had five main points:

- the United States should apologize to Native Hawaiians for the overthrow of the Monarchy;
- a land and natural resource base, comprised of the Hawaiian Home Lands, a fair share of the Ceded Lands Trust, the island of Kahoʻolawe, and other appropriate lands, should be returned to Native Hawaiians;
- a Native Hawaiian government should be recognized and given sovereign authority over the territory within its land base ;
- subsistence and commercial hunting, fishing, gathering, cultural, and religious rights of Native Hawaiians should be recognized and protected;
- Native Hawaiians should be given an appropriate cash payment.

Numerous additional groups with similar purposes have formed in the 1990s.

By the 1980s, the claims of Native Hawaiians had gained attention in Congress and with the President of the United States. In 1983, the Congressionally-mandated and Presidentially-appointed Native Hawaiian Study Commission (NHSC) issued a two volume Final Report to Congress on the Culture, Needs and Concerns of Native Hawaiians (pursuant to Pub. L. No. 96-565) (Final Report). Volume I, also known as the majority report, identified problems and concerns of Native Hawaiians, especially focusing on health, education, and welfare issues (these topics are covered in more detail later in this report). On the issue of the overthrow of the Hawaiian Monarchy, Volume I concluded that the United States bears no legal or moral responsibility or culpability for the actions of American officials at that time. Volume II, the minority report, disagreed with the conclusions of Volume I and placed a significant level of blame for the overthrow of the Hawaiian Monarchy on the United States Minister and United States Marines Commander in Hawaii. Volume II recommended that Native Hawaiians be included in all Native American programs and other existing programs that may provide needed assistance. Volume II also recommended that all individuals with ancestors that were natives of the Hawaiian Islands prior to 1778 be considered Native Hawaiians for the purposes of all laws. Congress did not resolve the differences in the two volumes of the report, reach a conclusion about the appropriateness of the actions of the United States in the overthrow of the Monarchy, or act on the recommendations of the minority report.

Also in 1983, a Federal-State Task Force Report was issued concerning the Native Hawaiian Home Lands (Task Force Report). The Task Force Report found a myriad of problems with the implementation of the Home Lands Trust during both the territorial period and after statehood, including inadequate inventory of the remaining lands, a poor record of success in placing Native Hawaiians on Home Lands, and inappropriate removal of lands from the trust. In total, over 30,000 acres were transferred from the trust to other agencies for public use. (Federal-State Task Force on the Hawaiian Homes Commission Act Report to United States Secretary of the Interior and the Governor of the State of Hawaii (August 15, 1983) (hereafter Task Force Report)).

Draft Report

Since 1984, the State of Hawaiʻi has acted to address some of these issues by cancelling twenty-four Executive Orders, nine forest reserves, and seven proclamations, returning 42,806 acres of previously withdrawn lands, to the Home Lands Trust. In addition, \$11,800,000 with interest, was paid for past use of Home Lands for public purposes. In 1995, the State of Hawaiʻi acted to resolve other claims for use and loss of Home Lands by enacting legislation that required the State to pay \$600,000,000 in \$30,000,000 increments over 20 years. To date, \$165,000,000 has been paid to the Department of Hawaiian Home Lands. An additional 16,518 acres have been identified for transfer to the Home Lands Trust. To date, 12,443 acres or 75 percent have been transferred. (1995 Haw. Sp. Sess. Laws 14).

In 1991, the Hawaiʻi Advisory Committee to the United States Commission on Civil Rights held hearings on the Native Hawaiian Home Lands and issued “A Broken Trust The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians” (Broken Trust Report). The Advisory Committee found a pattern of negligence on the part of both the State and Federal Governments in implementing the Home Lands Trust and made a series of recommendations designed to correct what it considered to be a long history of mismanagement. In both the Broken Trust Report and the Task Force Report, recommendations were made to the Federal Government. Most of these recommendations have not been acted upon. The Broken Trust Report recommended that the Federal Government: (1) should enact legislation establishing a clear Federal trust duty to Native Hawaiians for fulfillment of the HHCA, (2) should enact legislation enabling Native Hawaiians to develop a political relationship with the Federal Government, (3) return and compensate for Home Lands currently controlled and used by the Federal Government, (4) should enact legislation that explicitly provides Native Hawaiians with the right to sue in Federal court for breaches of trust, (5) provide Federal funding and support to fully implement the intent of the HHCA, and (6) provide Federal support for a complete land inventory. (Broken Trust Report at 43-48).

In 1995, the Congress, after legislation proposed by Senator Akaka, sought to resolve some of the issues raised in the Broken Trust Report by enacting the Hawaiian Home Lands Recovery Act (HHLRA). (Pub. L. No. 104-42, 109 Stat. 357 (1995)). The purpose of HHLRA was to identify Federal lands that were originally part of the Home Lands Trust and to either return them, provide lands in exchange, or compensate the Department of Hawaiian Home Lands (DHHL), as administrator of the trust. Between 1921 and 1959, twenty-nine (29) Presidential Executive Orders were signed, transferring a total of 13,578 acres of Home Lands to other public agencies. Claims based on these transfers were settled by a Memorandum of Agreement (HHLRA MOA) between the Department of the Interior and the State of Hawaiʻi, dated August 31, 1998. The HHLRA MOA provided for 960 acres in real property, at eight locations on Oʻahu and one location on Hawaiʻi, to be transferred to DHHL. To date, the properties at Mānana Housing (20 acres) and Omega Hāʻikā (167 acres) have been transferred and transfer of the properties at Ōpū Point (38 acres) and Barbers Point (586 acres) are imminent. Work is underway to accomplish the transfer of the remaining properties, Lāwāʻi Laundry (3 acres), ʻEwa Drum (56 acres), Waipahā FCC Monitoring Site (47 acres), BPNAS Raceway Expansion (16 acres) and Lualualei Buffer (27 acres), as soon as possible.

In May 1993, the Hawaiʻi State Legislature, in response to a groundswell of support for Hawaiian sovereignty, agreed to fund a process for the indigenous Hawaiian people to draft an organic document for the governance of a Hawaiian sovereign nation. The Hawaiʻi Legislature set up a Hawaiian Sovereignty

Advisory Commission (HSA Commission) to advise the legislature on the following: (1) holding a plebiscite to determine the will of the Native Hawaiian people to call a democratically convened convention for the purpose of achieving consensus on an organic document that will propose the means for Native Hawaiians to operate under a government of their own choosing; (2) providing for a mechanism to democratically convene a Native Hawaiian convention so that Native Hawaiians may openly and freely discuss and decide the form and structure of that government; and (3) describing the process to conduct fair, impartial and valid elections including a plebiscite. The HSA Commission's report was accepted by the 1994 Legislature and the HSA Commission was reorganized into the Hawaiian Sovereignty Elections Council (HSEC). (1993 Haw. Sess. Laws 359).

In July 1996, the HSEC mailed out 81,507 ballots to registered Native Hawaiian voters asking, "Shall the Hawaiian people elect delegates to propose a Native Hawaiian government?" A total of 30,423 ballots were cast, representing 37% of the registered voters. Of these, 22,294 or 73% of the ballots cast voted YES and 8,129 or 27 % of the ballots cast voted NO. Due to a lack of additional State funding, members of the HSEC then formed an independent non-profit organization, H~ Hawai'i, which raised the funds to hold an election of delegates for a Native Hawaiian Convention on January 17, 1999. Out of 101,000 registered voters only 8,867 or 9 percent cast ballots. There were 77 delegates elected to represent Native Hawaiians from the various islands as well as Native Hawaiians living elsewhere, primarily in the continental United States.

In 1993, Congress passed and on November 23, 1993, President Clinton signed the Apology Resolution ". . . to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai'i". The Apology Resolution further expressed a commitment to provide a proper foundation for reconciliation between the United States and Native Hawaiians. (Pub. L. No. 103-150, 107 Stat. 1510). The Apology Resolution was an initiative of the Congressional delegation from Hawai'i in recognition of the 100-year anniversary of the overthrow of the Kingdom of Hawai'i.

Also in 1993, at the request of Senator Inouye, the Federal Government performed inventories of lands held in Hawai'i by Federal agencies. The report estimated that 418,543.68 acres of Ceded Lands were held by Federal civilian agencies, and 141,579.17 acres were held by Department of Defense. (General Services Administration, Executive Summary and Inventory of Real Property owned or Controlled by the United States of America under the Custody and Accountability of Federal Civilian Agencies in the State of Hawaii at 99 (1993) (hereafter GSA); Charles Blackard and Associates, Inventory of Real Property Owned or Controlled by the United States of America under the Custody and Accountability of the Department of Defense in the State of Hawaii at 284-285 (1993) (hereafter Blackard)). These estimates include Federal holdings of 254,418.10 acres of emerged and submerged lands in the Northwestern Hawaiian Islands, which were not part of Ka Mahele and where not included by Congress when estimating the Ceded Lands acreage in the Apology Resolution, and may not have been included in earlier inventories.

More recently, in *Rice v. Cayetano*, 120 S. Ct. 1044 (Feb. 23, 2000), Rice, a non-Native Hawaiian, challenged the voting limitations contained in the Constitution of the State of Hawai'i, which established the Office of Hawaiian Affairs. Those voting limitations restricted voting for the Board of Trustees of the State Office of Hawaiian Affairs to Native Hawaiians and Hawaiians, as defined by ancestry (in this report we are using the terms native Hawaiians (as defined in the HHCA) and Native Hawaiians). On February 23,

2000, the United States Supreme Court held that the Fifteenth Amendment barred the State from using ancestry as a voting requirement. The Supreme Court distinguished Indian tribal elections, which are conducted by “quasi-sovereign tribal governments” from the State sponsored elections at issue in this case, but declined to answer the question of whether Congress can deal with Native Hawaiians in the same manner as Indian tribes. (120 S. Ct. at 1057).

Justice Kennedy, writing for the majority, addressed the State’s argument that the voting restriction was permissible under Congress’ Indian affairs power as explained in *Morton v. Mancari*, 417 U.S. 535 (1974). In *Rice*, the Court held that it need not address the question whether Native Hawaiians “have a status like that of Indians in organized tribes” because “[e]ven were [the Court] to take the substantial step of finding authority in Congress . . . to treat Hawaiians or native Hawaiians as tribes, Congress may not authorize a State to create a voting scheme of this sort.” (*Id.* at 1058). The Court distinguished tribal elections on the basis that “[i]f a non-Indian lacks a right to vote in tribal elections, it is for the reason that such elections are the internal affairs of a quasi-sovereign.” (*Id.* at 1058-59).

Justice Breyer, joined by Justice Souter, concurred in the result. The concurring opinion rejected the State’s argument that its voting restrictions for the Office of Hawaiian Affairs can be justified based on the “analogy between its Office of Hawaiian Affairs and a trust for the benefit of an Indian tribe.” (*Id.* at 1060-61). The concurring Justices rejected the State’s voting restrictions because “(1) there is no ‘trust’ for native Hawaiians here, and (2) OHA’s electorate, as defined in the statute, does not sufficiently resemble an Indian tribe.” (*Id.* at 1061). Justice Breyer notes that the statute, with its use of the lineal descendancy definition for Hawaiians, would include anyone who is 1/500th Native Hawaiian. Accordingly, Justice Breyer concludes that the Office of Hawaiian Affairs is not analogous to an Indian tribe because “the statute defines the electorate in a way that is not analogous to membership in an Indian tribe.” (*Id.*).

Justice Stevens, joined, in part, by Justice Ginsburg, dissented. In their view, “[t]he descendants of native Hawaiians share with the descendants of Native Americans on the mainland or in the Aleutian Islands not only a history of subjugation at the hands of colonial forces, but also a purposefully created and specialized ‘guardian-ward’ relationship with the Government of the United States.” (*Id.* at 1066). Accordingly, in the dissenters’ view, the State of Hawaii’s voting restrictions should be upheld because they are “tied rationally to the fulfillment of Congress’ unique obligation toward the native peoples.” (*Id.* at 1066-68).

CURRENT STATUS AND MAJOR ISSUES

Native Hawaiian Culture

The injustices of the past have severely damaged the culture and general welfare of Native Hawaiians. Following contact with Europeans, introduced diseases (such as leprosy, tuberculosis, small pox, measles, and bubonic plague) ravaged Native Hawaiian communities and the population decreased from an estimated 400,000-800,000 in 1778 to less than 40,000 by 1893, a mere tenth of even the most conservative estimates of the pre-1778 population. (Native Hawaiian Rights Handbook at 44). Changes in the land tenure system resulted in alienation of Maka#-inana from the land and the dispersal of the #ohana (extended families) and communities. The culture that evolved around a subsistence way of life transformed as families moved to urban areas in search of a livelihood. The culture was further undermined by mandating that the English language be the exclusive medium of instruction in public education beginning in 1896. Outside isolated sectors of the Native Hawaiian community, the Hawaiian language and the vibrant Native Hawaiian oral tradition were falling into disuse by the middle of the twentieth century.

Despite these ravages, Native Hawaiians have maintained a distinct community and culture. Indeed, over the past several decades, Native Hawaiian culture has seen a rejuvenation. However, in socio-economic terms, including health, education, and economic status, Native Hawaiians continue to lag behind that of the general population of the State of Hawai#. Native Hawaiians also continue to lag behind the general population in access to and use of available programs. Throughout the December meetings and hearings, it became apparent that many valuable Federal programs either were not available to Native Hawaiians or Native Hawaiians were not aware of the availability of Federal programs appropriate for their needs. It also became clear that the neighbor islands suffer from these problems disproportionately.

Health and Welfare

Ke kã nÇ ia o ke kumu kauila o Pu#ukapele
#A#ohe makani n-na i kula#i.
Amid all adversity, the kauila tree of Pu#ukapele
stands tall and withstands all.

The OHA Native Hawaiian Data Book of 1998 describes a myriad of social indicators that provide a disturbing view of the status of Native Hawaiian people and culture. (Office of Hawaiian Affairs, Native Hawaiian Data Book (Mark Eshima, ed., 1998) (hereafter Native Hawaiian Data Book)). Native Hawaiians have a shorter average life span and the majority of Native Hawaiians have at least one high risk factor, including a sedentary life style, obesity, hypertension, smoking, or acute drinking. Statistics include a heart disease mortality rate of 38 percent and a malignant neoplasm mortality rate of an additional 24 percent. (Native Hawaiian Data Book at 301-457). In addition, the overall cancer mortality rate is 45 percent higher than that in the overall state population and the mortality rate due to diabetes is 130 percent higher. (Excerpted from Papa Ola LÇkahi statement, based on CRCH Hawai# Tumor Registry, 1996).

Social statistics relating to Native Hawaiian children are equally poor. A particularly disturbing statistic shows that, in 1995, 34 percent of all victims of child abuse or neglect in Hawai# were Native Hawaiian

Draft Report

and 65 percent of all new-born children referred to Healthy Start, an early intervention program, were Native Hawaiian. (Native Hawaiian Data Book at 284 & 296). In addition, Native Hawaiian children make up 49 percent of the children in the State's foster care system and 70 percent of those stay in foster care over one year (excerpted from statement based on State of Hawaii, Department of Human Services data). Elevated crime rates continue to be a concern as well, particularly among younger Native Hawaiians. While Native Hawaiians make up an estimated 12 to 20 percent of the population in the state, they constitute 33 percent of the juvenile arrests. Incarceration rates for Native Hawaiian youth are even higher; of all youths incarcerated in Hawaii, 51 percent are Native Hawaiian. (Native Hawaiian Data Book at 494).

The Federal Government has not always been diligent in addressing the health care needs of Native Hawaiians. Under the Kingdom of Hawaii, King Kamehameha IV and Queen Emma founded the Queen's hospital as a national health care institution funded out of the Treasury of the Hawaiian Government. Indigent Native Hawaiians were provided health care free of charge. Under the United States, the Territorial Government terminated funding of the Queen's Hospital and health care for indigent Native Hawaiians.

Since 1988, the Federal Government has provided funding for the improvement of Native Hawaiian health care programs such as early detection screening and risk factor referral for cardiovascular disease, diabetes, and cancer; promotion of a traditional Hawaiian foods diet to reduce cardiovascular, diabetes and obesity risk factors; and the integration of traditional Hawaiian healing treatments. While efforts are being made to address health problems in the Native Hawaiian community, these statistics are daunting challenges and will require multi-agency, multi-year responses along with significant resources if they are to be reversed.

Economics and Housing

#A#ohe hana nui ke alu #ia
No task is too big when done together by all

The OHA Native Hawaiian Data Book of 1998 also shows that incomes in the Native Hawaiian community are lower than the state-wide average. In 1989, 19 percent of Native Hawaiians were in the lowest tenth percentile income bracket (less than \$15,000) and unemployment amongst Native Hawaiians was 1.5 times higher than the unemployment rate statewide. In 1990, 7 percent of the State's population was below the poverty level, but the rate was 14 percent in the Native Hawaiian community, double the statewide rate of poverty. In 1997, of the 84,000 inhabitants of the islands that were receiving financial assistance, 23,000 of them were Native Hawaiian.

Exacerbating the low income problems is the lack of affordable housing units in the state. This problem is caused in large part by the accumulation of large amounts of land in relatively few hands. The State and Federal Governments control about 38 percent of the land and six private land owners control another 22 percent. Of the Home Lands that the Department of Hawaiian Home Lands administers, only 21 percent were in homestead use by 1997 while 29,163 applications from nearly 19,000 Native Hawaiians remain on the waiting list. (DHHL Annual Report at 15). A dauntingly high 49 percent of Native Hawaiians

experience housing problems. A recent study by the United States Department of Housing and Urban Development concluded that Native Hawaiians had “the highest rate of housing problems in the nation, preceding Native Americans and Alaska Natives (44%) and almost double the rate of all U.S. households (27%).” (Excerpted from OHA statement).

Congress has acted to address some of the economic problems through Federal programs, although more needs to be done. To assist Native Hawaiians in community-based economic development and private entrepreneurship, Congress appropriated \$10,000,000 for the Native Hawaiian Revolving Loan Fund. The Department of Agriculture has recognized the island of Molokai as an Economic Enterprise Zone and provided \$2,500,000 for economic development projects designed by the community in partnership with private enterprise. In addition, the Administration for Native Americans has provided grants for various community-based economic development projects.

Education

I ka #Ālelo nĀ ke ola; I ka #Ālelo nĀ ka make
In the language is life; In the language is death

The OHA Native Hawaiian Data Book of 1998 shows mixed educational statistics. Education was an important part of Native Hawaiian culture as evidenced by the importance of Kāpuna (elders) in traditional Hawaiian society, the high literacy rates (estimated at 70-90 percent) in the Native Hawaiian community in the mid-late 1800s, and the existence of more than 100 Hawaiian language newspapers in the 1890s. In the United States, education has long been recognized as a central method to improve one’s economic situation, increase one’s income, and gain access to critical services.

Statistics show that in 1989, Native Hawaiian children ranked in the tenth percentile on the Peabody Picture Vocabulary Test-Revised, a language assessment instrument used to assess readiness for elementary school instruction. These results compare unfavorably with the state-wide total of 15 percent and the rates for Caucasian and Japanese children of 36 percent and 42 percent, respectively. In 1990, Native Hawaiians completed high school at a higher rate (50.7 percent) than the statewide average (43.7 percent). However, these trends did not continue into higher education where 27.52 percent of Native Hawaiians completed Associates degrees compared to 37.97 percent state-wide and only 2.13 percent completed a Bachelors degree or higher, compared to 5.37 percent state-wide. When considering the whole United States and not only those Native Hawaiians in Hawaii, the rate rises to 3.9 percent but is still lower than the state-wide rate. (Native Hawaiian Data Book at 203-257). In addition, “the rates for absenteeism and retention-in-grade among Hawaiian students are considerably higher than for other ethnic groups. And understandably, assessments reveal a functional illiteracy rate of about 30 percent among adult Hawaiians.” (Excerpted from Kamehameha school statement).

Native Hawaiian children face a variety of difficulties in the educational system. For example, parents from Nihoa described to the authors the difficult transition that many of their children experienced moving from Hawaiian language instruction in primary school on Nihoa to English language instruction in middle and high school on Kauai. They emphasized the need for special programs to ease this transition, including English as a second language to better match the needs of their children. Without this instruction, parents were

Draft Report

concerned for the safety of their children on Kauaʻi, because of their initial difficulty in understanding and communicating important information in English.

In addition to the educational efforts of private organizations and the State on Hawaiʻi, Congress has acted to assist Native Hawaiians. In support of the education of Native Hawaiians, Congress appropriated \$114,700,000 under the Native Hawaiian Education Act from 1989 through 2000 for programs including Native Hawaiian family-based education centers, the Native Hawaiian Higher Education Program, and Nā Pua Noʻeau, a Native Hawaiian Gifted and Talented Program. From 1994 through 2000, Congress also provided \$169,900,000 for the Native Hawaiian Employment and Training Program, Native Hawaiian Vocational and Education Program, and the Native Hawaiian Culture and Arts Program. In 1999 alone, another \$2,000,000 was appropriated for the Maui Community College Hāʻau Aʻo project, Alu Like Inc., Aha Pānana Leo, Edith Kanakaʻole Foundation, and the Hawaiian Language College at the University of Hawaiʻi-Hilo. These programs have increased access to Native Hawaiian educational efforts, but more still needs to be done to reverse current educational trends in the Native Hawaiian community.

Cultural Rejuvenation

Hoʻi hou i ka iwi kuamoʻo
Look to your ancestors for strength

Despite these grim statistics, the Native Hawaiian culture and community have not only survived, but have experienced a renaissance in the last several decades. In particular, Native Hawaiians fought for and achieved the right to develop Hawaiian language immersion schools, where the Hawaiian language is the medium of instruction. As mentioned before, traditional Native Hawaiian culture has a strong oral tradition that was severely damaged by the mandating of English in public schools in 1896, a law that remained in place until 1986. In 1983, a group of University of Hawaiʻi professors and native speakers from Nāihau formed Pānana Leo, to develop Hawaiian language immersion preschools. In 1984 the first Pānana Leo school opened and by 1995, the nine Pānana Leo Hawaiian Immersion preschools had a total enrollment of 181 students. In addition, Pānana Leo began to work toward rescinding the law that mandated that English be the only medium of instruction in public schools. In 1987, the Hawaiian language was again taught in public schools after an absence of 100 years and by the 1999-2000 school year Ka Papahana-Kaiapuni Hawaiʻi (public education Hawaiian Language Immersion Program) had approximately 1,750 students enrolled in 18 schools. Nā hāʻau hula, schools that teach traditional Hawaiian dance and chant have also flourished and Lāʻau Lapaʻau, traditional herbal and spiritual healing practices have been recognized as valuable medicinal practices. In addition, traditional navigational skills that made the Polynesian peoples famous and permitted Native Hawaiian ancestors to reach and settle the Hawaiian islands, have been revived.

Several Native Hawaiian organizations have formed since the early 1970s with the aim of strengthening and reviving Native Hawaiian culture, protecting Native Hawaiian rights, ensuring Native Hawaiians receive their fair share of the Ceded Land Trust, improving the administration of the Home Lands Trust, and providing Native Hawaiians the right to self-determination and self-governance. The accomplishments and future goals of these organizations have been discussed previously.

Draft Report

The Native Hawaiian people have worked to maintain their traditional social, cultural, religious, and linguistic ties and a cohesive community life through the organizations mentioned previously, as well as many other groups. The Native Hawaiian people maintain their strong sense of community identity and cultural distinctiveness and continue to maintain their shared values through traditional cultural practices, such as subsistence gathering and stewardship of the land. Even on the populated island of Oahu, on the edges of Honolulu, Native Hawaiian residents of the Maunaloa community take pride in their continued occupancy of the land. This community, as well as many others in Hawaii have sustained the integrity of their cultural landscape and community cohesiveness in the face of continued urban encroachment. With the spread of the Native Hawaiian cultural revival movement and the success of Native Hawaiian schools, a growing number of Native Hawaiian children are fluent in both Hawaiian and English. The authors visited a preschool classroom, where Native Hawaiian children shared traditional Hawaiian chants and listened to traditional stories in the Hawaiian language. On the island of Niihau, Native Hawaiian children continue to learn Hawaiian as their first language both at home and in the schools. As a result, when Hawaiian language schools were formed, Niihau community members formed the core of the Hawaiian language instructors.

In sum, Native Hawaiians have maintained their status as a distinctly native, indigenous community since the time of their first contact with Europeans. The United States and the State of Hawaii have continually recognized the Native Hawaiian people as a distinct community through legislation and executive action. In fact, the 200,000 acres of Hawaiian Home Lands were set aside by Congress for native Hawaiians (as defined in HHCA) to enable them to live a traditional agriculture lifestyle and the lands were restricted against alienation to preserve Native Hawaiians' traditional connection to the land.

Actions taken in the next several decades may well determine the survival of Native Hawaiian culture. Today there still are Native Hawaiians from all walks of life, both in Hawaii and elsewhere, who use traditional knowledge and practices passed down from their Kāpuna. Of special significance are rural Hawaiian communities, such as on Molokai, that have maintained a continuous tie to the land and sea, know the methods for successfully growing taro and maintaining fish ponds, and know where to find and how to use native plants for traditional healing methods. However, access to forest and mountain areas for hunting and gathering of native plants for medicine is being cut off and traditional stewardship and management of land for generations by the same Native Hawaiian families is being threatened by new owners. The survival of these rural communities and the knowledge they carry is especially critical to the continued revival of Native Hawaiian culture.

Self-Determination

E kākulu aʻe k~kou no ke ea o ka ʻāina
Let us build the forward momentum for the life of the land

In the Apology Resolution, Congress stated and President Clinton endorsed the official view of the Federal Government: the United States' officers were wrongly involved in the overthrow of a legitimate and independent government in Hawaii and the deprivation of the rights of Native Hawaiians to self-determination. The Apology Resolution further stated that the United States is committed to reconciliation between the United States and the Native Hawaiian people (Pub.L. No. 103-150, 107 Stat. 1510).

Draft Report

As discussed previously, there are numerous Native Hawaiian organizations working for re-establishment and recognition of a sovereign Native Hawaiian nation. These organizations seek to improve and uplift Native Hawaiian health, education, and standards of living and to protect religious and cultural customs, beliefs and practices. In the last fifteen years there has been a wide-ranging discussion on the issue of Native Hawaiian self-determination and sovereignty. There are many views on the definition and strategies for sovereignty. Many people agree that self-determination, whatever the form, is the necessary outcome of the reconciliation process. The reestablishment and recognition of a government provides the framework for Native Hawaiians to address their most pressing political, health, economic, social, and cultural needs.

Several Federal, State, and Native Hawaiian groups have made recommendations to the Federal Government on ways to effect self-determination. The recommendations are based in part on the view that Native Hawaiians were deprived of their right to self-determination and that they never directly relinquished their claims to their inherent sovereignty as a people. These recommendations cover the spectrum from a return to independent nationhood to a recognition of a Native Hawaiian governing body as a tribe in the fashion endorsed by Congress. The United States Government is committed to continuing the reconciliation process and resolving these long-standing political issues within the framework of Federal law. However, it is important to understand that the Federal Government does not support and the United States Constitution does not permit the secession of any state that has been admitted to the Union. Increasingly, Native Hawaiian organizations have expressed support and solidarity for Federal recognition of a Native Hawaiian Government. (Miliani B. Trask, *Historical and Contemporary Hawaiian Self-Determination: A Native Hawaiian Perspective*, 8 Ariz. J. Int'l & Comp. L. 77 (1991); Jon M. Van Dyke, *The Political Status of Native Hawaiian People*, 17 Yale L & Policy Rev. 95 (1998); Broken Trust Report at 43; Pub. L. No. 103-150, 107 Stat. 1510; 25 U.S.C. § 479a).

Questions have arisen recently about the effect, if any, of the recent Supreme Court decision in *Rice v. Cayetano* on the reconciliation process. In the view of the Departments, that decision should not stand as an obstacle to the Federal Government's ongoing efforts to work with the Native Hawaiian community in furtherance of "reconciliation" under the Apology Resolution. Furthermore, the *Rice* decision highlights the importance of legislation to provide a statutory basis for a government-to-government relationship with Native Hawaiians as an indigenous, aboriginal people. If such legislation were enacted, it would clarify the political status of Native Hawaiians as an indigenous, aboriginal people with a special trust relationship with the United States. In passing such legislation, Congress would set forth its view that Congress has the authority over Indian Affairs to enact legislation for the benefit of Native Hawaiians as an indigenous, aboriginal people.

Ceded Lands and the Home Lands Trust

E mau ana ka hana kāpono o ka #~ina
Continue the good and righteous work for the land

The Apology Resolution states that the Republic of Hawai'i ceded 1,800,000 acres of Crown, Government, and public lands of the Kingdom of Hawai'i without the consent of or compensation to the Native Hawaiian people of Hawai'i or their sovereign government. The Apology Resolution also states that

Draft Report

the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty or over their national lands to the United States, either through their Monarchy or through a plebiscite.

The Public Lands originated in the 1848 Mahele in which 984,000 acres were reserved for the Crown and 1,523,000 acres were reserved for the Government of the Kingdom of Hawaiʻi. (Chinen; Levy at 856). As discussed above, the Provisional Government laid claim to what remained of these lands after the overthrow of the Hawaiian Monarchy in January 1893. When the Republic of Hawaiʻi was formed to succeed the Provisional Government, title to the Crown and Government Lands was transferred to the Republic. In 1898, under the Newlands Resolution, the Republic ceded these lands to the United States Government.

A survey of the metes and bounds of each land parcel in Hawaiʻi has never been conducted by the Kingdom of Hawaiʻi, the Provisional Government, the Republic of Hawaiʻi, the United States Government, the State of Hawaiʻi or the Office of Hawaiian Affairs. However, records of land transactions were kept. On December 12, 1899, J.F. Brown, Agent of Public Lands for the Republic of Hawaiʻi submitted a report to the United States Senate. In his report he provided an approximate figure for the division of lands under Ka Mahele as 1,495,000 acres of Government Lands; 984,000 acres of Crown Lands; 1,619,000 acres of Chiefs' lands, and 28,600 acres of Makaʻāinana lands. (Senate Committee on Foreign Relations, Hawaiian Land Systems and Transactions thereunder, S. Doc. No. 72, 56th Cong., 1st Sess. (1899) (hereafter S. Doc. No. 72 (1899))). However, later studies of the Mahele records by scholars have placed the amount of Government Land at 1,523,000 acres. (Chinen; Levy at 856).

During the Kingdom of Hawaiʻi, some lands were sold or otherwise transferred from the Government Lands, but again, the land was not systematically inventoried. Mr. Brown reported it as approximately 500,000 acres. (S. Doc. No. 72 (1899)). The Crown Lands, by law, could not be alienated. Despite that, in 1882, 24,000 acres of Crown Lands in Wailuku, Maui were granted to Claus Spreckels in settlement of a claim to the Crown Lands which he had purchased from Princess Ruth Keʻelikōʻani. (6 Hawaiian Reports 446-447, 457-460, Laws at 11-12 (1882)). These transactions left an estimated 995,000 acres of Government Lands and 960,000 acres of Crown Lands in 1893.

In 1895, the Republic of Hawaiʻi passed the Land Act to promote the settlement and improvement of Government Lands. According to Mr. Brown, the Republic alienated 46,594.22 acres under this land act. Although the Republic of Hawaiʻi ceded the Crown and Government Lands of the Kingdom of Hawaiʻi to the United States Government under the Annexation Resolution of July 7, 1898, the Republic continued to issue land patents and issue leases for an additional 15,334.26 acres of land through September 1899, according to Mr. Brown. (S. Doc. No. 72 (1899)). Assuming these recorded land transactions by the Republic of Hawaiʻi constitute all land transactions of the period, a total of 1,893,071.52 acres should have remained in the Government and Crown Lands in 1899.

According to the report of Mr. Brown, the combined area of Government and Crown Lands remaining in December 1899 to be ceded to the United States, totaled 1,751,400 acres. (S. Doc. No. 72 (1899)). However, of this amount 31,345 acres were under leases which could be converted to land patents. (S. Doc. No. 72 (1899)). The final disposition of these lands remains unclear. In addition to the Crown and Government Lands from the time of the Mahele, the Republic of Hawaiʻi ceded to the United States 254,418.10 acres of emerged and submerged lands of the Northwestern Hawaiian Islands, most of which

Draft Report

had been claimed by the Kingdom of Hawaiʻi after Ka Mahele. (An Act to Provide for a Government for the Territory of Hawaii (Organic Act), 31 Stat. 141 § 2, 56th Cong. Sess. 1 (April 30, 1900)); J. N. Cobb, *The Commercial Fisheries of the Hawaiian Islands* in 1903 at 435, in *Bulletin of the U.S. Fish Commission* Part II at 715-765 (1903); Letter from H. A. P. Carter, Hawaiian Legation, to the Hon. T. F. Bayard, Secretary of State, Washington (Jan. 10, 1887)).

Thus, assuming Mr. Brown's estimates are accurate and including the lands of the Northwestern Hawaiian Islands, the total amount of lands ceded to the United States was approximately 2,005,818.1 acres. However, this is still an approximate figure which would require a careful review of the records of the Commissioner for Public Lands for the Kingdom of Hawaiʻi, the Provisional Government, the Republic of Hawaiʻi, and the Territory of Hawaiʻi. The Report of the Governor of Hawaiʻi in 1901 provides maps and a detailed list of the Crown and Government Lands on each island. (Hawaiʻi (Territory) Governor, Annual Report to the Secretary of the Interior 1901 (1902)). Under the Organic Act of 1900, the government of the Territory of Hawaiʻi was given the power to manage and dispose of the Ceded Lands as public lands for the interest of the inhabitants of the Islands of Hawaiʻi. (An Act to Provide for a Government for the Territory of Hawaii (Organic Act), 31 Stat. 141, 56th Cong. Sess. 1 (April 30, 1900)). An undetermined amount of land was transferred from the trust through unfavorable land exchanges such as in Lānaʻi in 1907, discussed above, where 48,000 acres were exchanged for 296 acres. In addition, the Federal Government also withdrew lands for its use and purposes.

As a result of the provisions in the Annexation Act and the Admissions Act that provided for the Federal Government to set aside Ceded Lands for civil and military use, by 1964, the United States had withdrawn 337,719.58 acres and was leasing an additional 30,176.18 acres. Of this acreage, 227,972.62 acres were located in national parks and the remainder was utilized for military purposes. The Federal Government had also acquired fee interest, through purchase or condemnation of 28,234.73 acres. Between 1959 and 1964 the Federal Government returned 595.41 acres to the State of Hawaiʻi. Between 1964 and 1991 it returned an additional 1,906 acres. (Native Hawaiian Rights Handbook at 27-31; Native Hawaiians Study Commission Report at 108-118). As mentioned previously, an inventory of Federal lands was performed in 1993. The inventory estimated that 418,543.68 acres of Ceded Lands were held by Federal civilian agencies, and 141,579.17 acres of Ceded Lands were held by Department of Defense. (Blackard; GSA). These estimates include Federal holdings of 254,418.10 acres of emerged and submerged lands in the Northwestern Hawaiian Islands, which were not part of Ka Mahele and were not included by Congress when estimating the Ceded Lands acreage in the Apology Resolution. Additional lands, such as 28,800 acres of the island of Kahoʻolawe in 1994, continue to be returned to the State of Hawaiʻi.

In 1921, Native Hawaiians sought to have the Crown Lands withdrawn from the public lands and set aside for exclusive homesteading by all Native Hawaiians. However, as discussed above, only 200,000 acres of third and fourth class Crown and Government Lands were set aside under the HHCA for homesteading by Native Hawaiians who had to qualify with a "blood quantum" of at least 50 percent. Issues of concern regarding the management of the Hawaiian Home Lands Trust are discussed above, and include withdrawn lands and the slow rate at which people have been provided Home Lands lots. In response to civil suits filed against the State of Hawaiʻi, steps have been taken to compensate the Home Lands Trust for documented loss and underpayment of lands. The Federal Government has also acted to compensate the Home Lands Trust for lands withdrawn under the Territorial Government by agreeing to return 960 acres

Draft Report

under the Hawaiian Home Lands Recovery Act. However, there continues to be great frustration in the Native Hawaiian community over the refusal of the United States to address claims of mismanagement of the Home Lands Trust during the territorial period. Another source of frustration in the Native Hawaiian community is the fact that the United States has never brought suit against the State of Hawaii for breach of trust although it has the authority to do so.

In 1978, the Hawaii State Constitutional Convention created the Office of Hawaiian Affairs (OHA) to receive a portion of the revenues from the Ceded Lands Trust to manage for the betterment of the conditions of native Hawaiians (as defined in the HHCA). The Hawaii State Legislature later set the prorata share for Native Hawaiian programs at one-fifth or 20 percent of the revenues generated annually from the Ceded Lands Trust. The lack of an accurate inventory of the Ceded Lands Trust and disagreement over what activities the State of Hawaii should consider to be revenue derived from the land base have led to the filing of several suits by OHA against the State of Hawaii. One of the first suits resulted in a payment of \$130 million by the State of Hawaii to OHA for revenue payments due, but not paid, from 1980 through 1991. OHA has also filed a suit which seeks 20 percent of the state revenues from public housing rents, affordable housing proceeds, fees and charges for patient services at Hilo Hospital, revenue from off-site Duty Free Shoppers stores and investment income earnings from various special funds. Circuit Court Judge Dan Heely ruled that these revenues are subject to the 20 percent assessment for OHA. The State of Hawaii has appealed the decision to the Hawaii State Supreme Court. In 1997, the Hawaii State Legislature passed Act 329 which will provide OHA 20 percent of the revenues from the Ceded Lands Trust up to a maximum of \$15.1 million. (1997 Haw. Sess. Laws 329).

In addition, OHA has filed suit against the State of Hawaii Housing Finance and Development Corporation to prevent the sale of Ceded Lands in the Lei Ali subdivision development in Lahaina, Maui, citing clauses in the Apology Resolution. OHA contends that the Apology Resolution indicates that the State of Hawaii may not have clear title to the Ceded Lands and that the Native Hawaiian people retain a claim to these lands. Circuit Court Judge Dan Heely found merit in the claim and ordered a trial for OHA and the State of Hawaii to argue their positions, a trial which, in the past three years has not yet been scheduled. (*Office of Hawaiian Affairs v. State of Hawaii Housing Finance and Development Corporation*, Civ. 94-420-11 (1994)).

In 1997 the Hawaii State Legislature authorized an appropriation of \$1 million each for the Department of Land and Natural Resources (DLNR) and the Office of Hawaiian Affairs to conduct a Ceded Lands inventory. No agreement could be reached between DLNR and OHA on how to conduct the inventory and the funds lapsed. In the current session of the Hawaii State Legislature S.B. 2108 will authorize a new appropriation for the inventory to be conducted. Statements received in the reconciliation meetings suggested that the Federal Government combine efforts with DLNR and OHA and conduct an inventory of the Ceded Lands under the management of various Federal agencies.

**SUMMARY OF UNITED STATES CONGRESSIONAL LEGISLATION
PERTAINING TO NATIVE HAWAIIANS**

After passage of the Organic Act and beginning in 1906, Congress continued to recognize a special relationship as an indigenous people with Native Hawaiians through the enactment of over one hundred eighty (180) Federal laws that either provided for the specific needs or conditions of Native Hawaiians or included Native Hawaiians in the class of Native Americans to be affected by those laws. Some of these legislative actions represent a recognition by Congress of the United States' special responsibility to protect Native Hawaiians' interests, while others make certain Federal programs for Native Americans available to Native Hawaiians.

Prior to 1921, when the HHCA was passed, a series of statutes authorizing appropriations for the Smithsonian Institution to conduct ethnological research among the American Indians and the natives of Hawaii¹ suggested that Congress regarded both native groups in the same manner. These appropriations continued until 1949. In 1921, when Congress passed the HHCA, which set aside approximately 200,000 acres of public lands for homesteading by Native Hawaiians, a House report analogized the HHCA to "previous enactments granting Indians . . . special privileges in obtaining and using the public lands." (H.R. Doc. No. 839 (1920)). The Act also contained provisions and later amendments, such as restrictions on alienation that were similar to those imposed on Indian lands under the Indian Reorganization Act. In 1938, the Kalapana Extension Act was enacted, providing access and homesteading privileges to native Hawaiians (as defined in the HHCA) within the Hawaii¹ National Park and recognizing Native Hawaiian fishing rights in the area. (Pub. L. No. 75-680, 52 Stat. 784 (1938)).

Nearly forty (40) years later, in 1959, with the passage of the Admission Act, the State of Hawaii¹ assumed the federally-delegated responsibility of administering the land that had been set aside under Federal law for the benefit of native Hawaiians (as defined in the HHCA). Congress authorized a public trust upon all the lands ceded to the State of Hawaii¹ upon admission. In addition, the United States delegated its responsibilities under the HHCA to the State of Hawaii¹ and charged the new State with a public trust, one purpose of which was the betterment of conditions for native Hawaiians (as defined in the HHCA). In the interim between 1921 and 1959, Congress enacted approximately twenty (20) pieces of legislation addressing Native Hawaiian issues.

From 1974 to 1998, Congress enacted approximately fifty (50) pieces of legislation treating Native Hawaiians in the same manner as American Indians and Alaska Natives, and, importantly, in 1974, began using a very broad definition of Native Hawaiian: anyone descended from the aboriginal people who occupied Hawaii¹ before 1778. In the Native Hawaiian Health Care Act, Congress specifically recognized some form of a trust relationship with Native Hawaiians by declaring that "[i]n furtherance of the trust responsibility for the betterment of the condition of Native Hawaiians, the United States has established a program for the provision of the comprehensive health promotion and disease prevention services to maintain and improve the health status of the Hawaiian people." (42 U.S.C. 11701). Congress also passed legislation that required the Administration for Native Americans to provide funds to OHA to issue economic development grants to Native Hawaiians. (43 U.S.C. § 2991b-1). Some additional examples of legislation treating Native Hawaiians in the same manner as other native peoples include: The Native

American Programs Act of 1974, Pub. L. No. 93-644 § 801, 88 Stat. 2291, 2324 (1975) (promoting Native Hawaiian, American Indian and Alaska Native economic and social self-sufficiency through financial assistance to agencies serving these groups); Joint Resolution on American Indian Religious Freedom, Pub. L. No. 95-341, 92 Stat. 469 (1978) (recognizing the rights of American Indians, Eskimos, Aleuts and Native Hawaiians to practice their traditional religions), National Science Foundation University Infrastructure Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988) (reserving a percentage of appropriations for institutions of higher learning that serve Native Americans, including Native Hawaiians); and the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.* (1998). These laws include Native Hawaiians in their scope because they are an indigenous people with whom the United States has recognized a special relationship and because Native Hawaiians face many of the same challenges that are common to all native peoples of the United States.

In addition to including Native Hawaiians within the scope of laws designed to deal with the issues and challenges that face all native peoples in the United States, Congress has also recognized the special needs of Native Hawaiians and has enacted over 100 pieces of legislation since the 1959 Admission Act to address the specific needs of Native Hawaiians. The laws have addressed issues ranging from healthcare and economic development to education and cultural/natural resource preservation. Some examples include the Native Hawaiian Study Commission Act, Pub. L. No. 98-139, 97 Stat. 871 (1983) (establishing the Native Hawaiians Study Commission to study the culture, needs and concerns of Native Hawaiians), Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986) (authorizes Health and Human Services to contract with organizations that provide drug abuse prevention, education, treatment and rehabilitation services to Native Hawaiians), Native Hawaiian Healthcare Act of 1988, Pub. L. No. 100-579, 102 Stat. 4181 (authorizes programs to improve the health status of Native Hawaiians and provide grants to develop comprehensive healthcare plan to improve Native Hawaiian health), Native Hawaiian Education Act, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (recognizing that Native Hawaiians are indigenous people and authorizing grants to assist Native Hawaiians in achieving national education goals), and the Assets for Independence Act, Pub. L. No. 105-285, 112 Stat. 2702 (1998) (authorizing Native Hawaiian organizations to conduct demonstration projects to evaluate the effects of savings, micro-enterprise and home ownership on families and communities). Such laws reflect Congress' recognition of a special relationship between the United States and Native Hawaiians.

Finally, the passage of the Apology Resolution in 1993, explicitly acknowledged the inherent sovereignty of Native Hawaiians at the time of the overthrow of the Kingdom of Hawai'i and announced support for reconciliation. (Pub. L. No. 103-150, 107 Stat. 1510).

APPENDICES

Draft Report

APPENDIX A. LOCATIONS WHERE REPORT AND WRITTEN STATEMENTS ARE AVAILABLE

In addition to the locations listed below, both the draft report and the written statements will be available on Interior's web site at <www.doi.gov>.

Locations where Copies of the Draft Report are Available for Pickup

The following organizations have agreed to have copies of the draft report available for pick up. Please call ahead to ensure copies are available.

U.S. Fish and Wildlife Service
Prince KāhīŪ Federal Building
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850
(808) 541-2749

Office of Hawaiian Affairs (Kaua#i/N#ihau)
3100 KāhiŪ Highway, Ste. C4
L#u#e, HI 96766
(808) 241-3508

Office of Hawaiian Affairs
711 Kapi#olani Blvd., Ste. 500
Honolulu, HI 96813
(808) 594-1888

Office of Hawaiian Affairs (East Hawai#i - Hilo)
234 Wai-nuenue Avenue, Ste. 104
Hilo, HI 96720
(808) 933-0418

Office of Hawaiian Affairs (West Hawai#i - Kona)
75-5706 Hanama Place, Ste. 107
Kailua-Kona, HI 96740
(808) 329-7368

Office of Hawaiian Affairs (Maui)
140 Ho#ohana St., Ste. 206
Kahului, HI 96732
(808) 243-5219

Office of Hawaiian Affairs (Moloka#i/L~na#i)
Kulana #Oiwī
Maunaloa Highway
Kalama#ula, HI 96748
(808) 553-3611

Locations where the Draft Report is Available for Public Inspection

Draft Report

The following organizations have agreed to make available a copy of the draft report for public inspection. Please call ahead to ensure that a copy of the report is available. If you wish to make a personal copy, please call to ensure that copy facilities are available.

University of Hawaiʻi at Hilo
Hawaiian Studies Department
200 W. Kawili Street
Hilo, HI 96720-4091
(808) 974-7339

Hamilton Library
Hawaiian Collection
University of Hawaiʻi at Mānoa
2550 The Mall
Honolulu, HI 96822
(808) 956-8264

Bond Memorial Public Library
54-3903 Akoni Pule Highway
Kapaʻau, HI 96755
(808) 889-6729

Hilo Public Library
300 Wai-nuenue Avenue
Hilo, HI 96720
(808) 933-8888

Hāʻiualoa Public Library
76-5935 Mamalahoa Highway
Hāʻiualoa, HI 96725-0214
(808) 324-1233

Honokaʻa Public Library
45-3380 Mamane Street
Honokaʻa, HI 96727
(808) 775-7497

Kailua-Kona Public Library
75-138 Hualāi Road
Kailua-Kona, HI 96740
(808) 327-4327

Keaʻau Public Library
16-571 Keaʻau-Pahoa Road
Keaʻau, HI 96749
(808) 966-8181

Kealahou Public Library
Māmalahoa Highway
Kealahou, HI 96750
(808) 323-7585

Laupāhoehoe Public Library
35-2065 Old Māmalahoa Highway
Laupāhoehoe, HI 96764
(808) 962-6911

Mountain View Public Library
1235 Volcano Highway
Mountain View, HI 96771
(808) 968-6300

Nāʻalehu Public Library
95-5669 Māmalahoa Highway
Nāʻalehu, HI 96772
(808) 929-7564

Pāhala Public Library
96-3150 Pikake Street
Pāhala, HI 96777
(808) 928-2015

Pāhoa Public Library
15-3070 Pāhoa-Kalapana Road
Pāhoa, HI 96778
(808) 965-8574

Thelma Parker Public Library
67-1209 Māmalahoa Highway

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Kamuela, HI 96743-8429
(808) 887-6067

Hanap' p' Public Library
4490 Kona Road
Hanap' p', HI 96716
(808) 335-5811

Kapa'a Public Library
1464 Kāhi' Highway
Kapa'a, HI 96746
(808) 821-4422

Kōloa Public Library
3451 Poipu Road
Kōloa, HI 96756
(808) 742-1635

Lāhū'e Public Library
4344 Hardy Street
Lāhū'e, HI 96766
(808) 241-3222

Princeville Public Library
4343 Emmalani Drive
Princeville, HI 96722
(808) 826-1545

Waimea Public Library
9750 Kaunualii Highway
Waimea, HI 96796
(808) 338-6848

Lāna'i Public Library
Fraser Avenue
Lāna'i City, HI 96763
(808) 565-6996

Hāna Public Library
4111 Hāna Highway
Hāna, HI 96713
(808) 248-7714

Kahului Public Library
90 School Street
Kahului, HI 96732
(808) 873-3097

Kāne'i Public Library
35 Wāimānalo Highway
Kāne'i, HI 96753
(808) 875-6833

Lahaina Public Library
680 Wharf Street
Lahaina, HI 96761
(808) 662-3950

Makawao Public Library
1159 Makawao Avenue
Makawao, HI 96768
(808) 572-8094

Wailuku Public Library
251 High Street
Wailuku, HI 96793
(808) 243-5766

Molokai Public Library
15 Alamalama Street
Kaunakakai, HI 96748
(808) 553-5483

Maui Public Library
99-143 Moanalua Road
Maui, HI 96701
(808) 483-7333

Manoa Haina Public Library
5246 Kalanianaʻole Highway
Honolulu, HI 96821
(808) 377-2456

Ewa Beach Public Library
91-950 North Road

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Ewa Beach, HI 96706
(808) 689-1204

Hawai'i Kai Public Library
249 Lunalilo Home Road
Honolulu, HI 96825
(808) 397-5833

Hawai'i State Library
478 S. King Street
Honolulu, HI 96813
(808) 586-3500

Kahuku Public Library
56-490 Kamehameha Highway
Kahuku, HI 96731
(808) 293-8935

Kailua Public Library
239 Ku'ulei Road
Kailua, HI 96734
(808) 266-9911

Kaimukū Public Library
1041 Koko Head Avenue
Honolulu, HI 96816
(808) 733-8422

Kalihi-Palama Public Library
1325 Kalihi Street
Honolulu, HI 96819
(808) 832-3466

Kāne'ohe Public Library
45-829 Kamehameha Highway
Kāne'ohe, HI 96744
(808) 233-5676

LBPH
402 Kapahulu Avenue
Honolulu, HI 96815
(808) 733-8444

Liliha Public Library
1515 Liliha Street
Honolulu, HI 96817
(808) 587-7577

Mānoa Public Library
2716 Woodlawn Drive
Honolulu, HI 96822
(808) 988-0459

McCully-Māhili Public Library
2211 S. King Street
Honolulu, HI 96826
(808) 973-1099

Mililani Public Library
95-450 Maka'imoku Street
Mililani, HI 96789
(808) 627-7470

Pearl City Public Library
1138 Waimano Home Road
Pearl City, HI 96782
(808) 453-6566

Salt Lake Public Library
3225 Salt Lake Blvd.
Honolulu, HI 96818
(808) 831-6831

Wahiawā Public Library
820 California Avenue
Wahiawā, HI 96786
(808) 622-6345

Waialua Public Library
67-068 Kealohanui Street
Waialua, HI 96791
(808) 637-4876

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Waiānāe Public Library
85-625 Farrington Highway
Waiānāe, HI 96792
(808) 696-4257

Waikōkō Kapahulu Public Library
400 Kapahulu Avenue
Honolulu, HI 96815
(808) 733-8488

Waimānalo Public Library
41-1320 Kalanianaʻōle Highway
Waimānalo, HI 96795
(808) 259-9925

Waipahā Public Library
94-275 Mokuola Street
Waipahā, HI 96797
(808) 675-0358

Department of Hawaiian Home Lands
Old Federal Building
335 Merchant Street, 3rd Floor
Honolulu, HI 96813
(808) 586-3800

Department of Hawaiian Home Lands-East
Hawaiʻi District Office
160 Baker Avenue
Hilo, HI 96720
(808) 974-4000

Department of Hawaiian Home Lands-West
Hawaiʻi District Office
Māmalahoa Highway
Kamuela, HI 96743
(808) 887-6053

Department of Hawaiian Home Lands- Kauaʻi
District Office
3060 ʻĒiwa Street, Room 203
Līhue, HI 96766-1886
(808) 274-3141

Department of Hawaiian Home Lands- Maui
District Office
Puʻuone Plaza, Room C-206
1063 East Main Street
Wailuku, HI 96793
(808) 984-2120

Department of Hawaiian Home Lands- Molokaʻi
District Office
Kulana ʻŌiwi
Maunaloa Highway
Kalamaʻula, HI 96748
(808) 560-6104

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University of Hawaiʻi at Mānoa
Center for Hawaiian Studies
Hawaiian Studies Building, Room 209A
2645 Dole Street
Honolulu, HI 96822
(808) 973-0989

Niihau School
Puʻuwai Ranch
Niihau, HI 96769
(No Phone Available)

Locations where Written Statements are Available for Public Inspection

The following organizations have agreed to make available a copy for public inspection of the written statements delivered to Interior during or since the December 1999 hearings. Please call ahead to ensure that a copy of the written statements is available. If you wish to make a personal copy, please call to ensure that copy facilities are available.

Niihau School
Puʻuwai Ranch
Niihau, HI 96769
(No Phone Available)

Lānaʻi Public Library (Lānaʻi)
Fraser Avenue
Lānaʻi City, HI 96763
(808) 565-6996

Hawaiʻi State Library
478 South King Street
Honolulu, HI 96813
(808) 586-3500

Molokaʻi Public Library (Molokaʻi)
15 Alamalama Street
Kaunakakai, HI 96748
(808) 553-5483

Hilo Public Library (East Hawaiʻi)
300 Wai-nuenue Street
Hilo, HI 96720
(808) 933-8888

Kailua-Kona Public Library (West Hawaiʻi)
75-138 Hualalai Road
Kailua-Kona, HI 96740
(808) 327-4327

Lāʻanā Public Library (Kauaʻi)
4344 Hardy Street
Lāʻanā, HI 96766
(808) 241-3222

Kahului Public Library (Maui)
90 School Street
Kahului, HI 96732
(808) 873-3097

Draft Report

APPENDIX B. COLLECTION POINTS FOR COMMENTS ON THE DRAFT REPORT

The following organizations have agreed to act as collection points for comments on the draft report. The comments will be forwarded regularly to the Departments. You can also send your comments directly to the Department of the Interior at the first address listed.

Assistant Secretary John Berry
c/o Document Management Unit
Department of the Interior
1849 C Street NW, Mailstop-7229
Washington, DC 20240

Office of Hawaiian Affairs (Molokai/Lanai)
P.O. Box 1717
Kaunakakai, HI 96748
(808) 553-3611

U.S. Fish and Wildlife Service
Prince Kāhili Federal Building
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850

Office of Hawaiian Affairs (Kauai/Niihau)
3100 Kāhili Highway, Ste. C4
Lihue, HI 96766
(808) 241-3508

University of Hawaii at Manoa
Center for Hawaiian Studies
Hawaiian Studies Building, Room 209A
2645 Dole Street
Honolulu, HI 96822
(808) 973-0989

Office of Hawaiian Affairs
711 Kapiolani Blvd., Ste. 500
Honolulu, HI 96813
(808) 594-1888

Office of Hawaiian Affairs (East Hawaii - Hilo)
234 Wai-nuenue Avenue, Ste. 104
Hilo, HI 96720
(808) 933-0418

Office of Hawaiian Affairs (West Hawaii - Kona)
75-5706 Hanama Place, Ste. 107
Kailua-Kona, HI 96740
(808) 329-7368

Office of Hawaiian Affairs (Maui)
140 Hoohana St., Ste. 206
Kahului, HI 96732
(808) 243-5219

**APPENDIX C. LIST OF INDIVIDUALS AND ORGANIZATIONS
WHO PARTICIPATED IN DECEMBER 1999 HEARINGS**

Appendix will be available with the Final Report

APPENDIX D. WRITTEN STATEMENTS RECEIVED

Written statements regarding the reconciliation process received by Interior are an official part of the record for this report. Copies of the written statements received will be available for public review in the near future at the locations listed in Appendix A. The original copy will be maintained at Interior, Washington, D.C.

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